IOWA ADMINISTRATIVE BULLETIN

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PUBLISHED UNDER AUTHORITY OF IOWA CODE SECTIONS 2B.5 AND 17A.6

PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike through letters~~ indicate deleted material.

Subscriptions and Distribution	Telephone:	(515)281-3568
	Fax:	(515)281-8027
KATHLEEN K. WEST, Administrative Code Editor	Telephone:	(515)281-3355
STEPHANIE A. HOFF, Assistant Editor		(515)281-8157
	Fax:	(515)281-4424

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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

Schedule for Rule Making
2005

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 31 '04	Jan. 19 '05	Feb. 8 '05	Feb. 23 '05	Feb. 25 '05	Mar. 16 '05	Apr. 20 '05	July 18 '05
Jan. 14 '05	Feb. 2	Feb. 22	Mar. 9	Mar. 11	Mar. 30	May 4	Aug. 1
Jan. 28	Feb. 16	Mar. 8	Mar. 23	Mar. 25	Apr. 13	May 18	Aug. 15
Feb. 11	Mar. 2	Mar. 22	Apr. 6	Apr. 8	Apr. 27	June 1	Aug. 29
Feb. 25	Mar. 16	Apr. 5	Apr. 20	Apr. 22	May 11	June 15	Sept. 12
Mar. 11	Mar. 30	Apr. 19	May 4	May 6	May 25	June 29	Sept. 26
Mar. 25	Apr. 13	May 3	May 18	***May 18***	June 8	July 13	Oct. 10
Apr. 8	Apr. 27	May 17	June 1	June 3	June 22	July 27	Oct. 24
Apr. 22	May 11	May 31	June 15	June 17	July 6	Aug. 10	Nov. 7
May 6	May 25	June 14	June 29	***June 29***	July 20	Aug. 24	Nov. 21
May 18	June 8	June 28	July 13	July 15	Aug. 3	Sept. 7	Dec. 5
June 3	June 22	July 12	July 27	July 29	Aug. 17	Sept. 21	Dec. 19
June 17	July 6	July 26	Aug. 10	Aug. 12	Aug. 31	Oct. 5	Jan. 2 '06
June 29	July 20	Aug. 9	Aug. 24	***Aug. 24***	Sept. 14	Oct. 19	Jan. 16 '06
July 15	Aug. 3	Aug. 23	Sept. 7	Sept. 9	Sept. 28	Nov. 2	Jan. 30 '06
July 29	Aug. 17	Sept. 6	Sept. 21	Sept. 23	Oct. 12	Nov. 16	Feb. 13 '06
Aug. 12	Aug. 31	Sept. 20	Oct. 5	Oct. 7	Oct. 26	Nov. 30	Feb. 27 '06
Aug. 24	Sept. 14	Oct. 4	Oct. 19	Oct. 21	Nov. 9	Dec. 14	Mar. 13 '06
Sept. 9	Sept. 28	Oct. 18	Nov. 2	Nov. 4	Nov. 23	Dec. 28	Mar. 27 '06
Sept. 23	Oct. 12	Nov. 1	Nov. 16	***Nov. 16***	Dec. 7	Jan. 11 '06	Apr. 10 '06
Oct. 7	Oct. 26	Nov. 15	Nov. 30	Dec. 2	Dec. 21	Jan. 25 '06	Apr. 24 '06
Oct. 21	Nov. 9	Nov. 29	Dec. 14	***Dec. 14***	Jan. 4 '06	Feb. 8 '06	May 8 '06
Nov. 4	Nov. 23	Dec. 13	Dec. 28	Dec. 30	Jan. 18 '06	Feb. 22 '06	May 22 '06
Nov. 16	Dec. 7	Dec. 27	Jan. 11 '06	Jan. 13 '06	Feb. 1 '06	Mar. 8 '06	June 5 '06
Dec. 2	Dec. 21	Jan. 10 '06	Jan. 25 '06	Jan. 27 '06	Feb. 15 '06	Mar. 22 '06	June 19 '06
Dec. 14	Jan. 4 '06	Jan. 24 '06	Feb. 8 '06	Feb. 10 '06	Mar. 1 '06	Apr. 5 '06	July 3 '06
Dec. 30	Jan. 18 '06	Feb. 7 '06	Feb. 22 '06	Feb. 24 '06	Mar. 15 '06	Apr. 19 '06	July 17 '06

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
19	**Friday, February 25, 2005**	**March 16, 2005**
20	**Friday, March 11, 2005**	**March 30, 2005**
21	**Friday, March 25, 2005**	**April 13, 2005**

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

*****Note change of filing deadline*****

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. West, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 2.0.0, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

bruce.carr@legis.state.ia.us and
kathleen.west@legis.state.ia.us

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Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies, but not on the diskettes; diskettes are returned unchanged.

Your cooperation helps us print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

The Administrative Rules Review Committee will hold a special meeting on Friday, March 4, 2005, at 9 a.m. in Room 22, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Supplemental Agenda to be published in the March 2, 2005, Iowa Administrative Bulletin.

ACCOUNTANCY EXAMINING BOARD[193A]
Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"

Certification and licensure; use of test administrator; record keeping; confidentiality, 1.1, 3.4(1), 3.4(2), 3.14, 4.2, 4.5, 4.6, 4.7(3), 4.14, 5.5(3) to 5.5(5), 5.8(7), 7.4(3), 7.4(4), 8.4(3), 8.4(4), 10.5, 13.5(2)"b," 13.5(3) to 13.5(6), 13.6(7), 13.6(8), 15.7, Filed **ARC 3982B** 2/16/05

ADMINISTRATIVE SERVICES DEPARTMENT[11]
Granting of waivers, 9.4, Notice **ARC 3981B** 2/16/05
Correction of cross reference, 40.13"5," Filed Emergency **ARC 3979B** 2/16/05

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
Motor vehicle fuel and antifreeze tests and standards, 85.33, Notice **ARC 3965B** 2/2/05

ALCOHOLIC BEVERAGES DIVISION[185]
COMMERCE DEPARTMENT[181]"umbrella"

Interest in a retail establishment, 16.2, Filed **ARC 3992B** 2/16/05

BLIND, DEPARTMENT FOR THE[111]
Department facility operations; discipline of food service licensees, 1.4, 1.13, 7.17, Notice **ARC 3984B** 2/16/05

DENTAL EXAMINERS BOARD[650]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Registered dental assistants—provision of intraoral suctioning, 1.1, 20.4(2), Notice **ARC 3976B** 2/2/05
Discipline—mandatory reporting of acts or omissions, 10.6(4), 30.4"24," 31.13(2)"a," 31.13(3), 31.14, Notice **ARC 3973B** 2/2/05
Dental hygienist licensure—second failure of clinical examination, 12.4(2), Filed **ARC 3977B** 2/2/05
Temporary permit for provision of volunteer services, 13.3, 15.1(16), 15.1(17), Notice **ARC 3975B** 2/2/05
Discipline—mandatory reporting of acts or omissions, 30.4"24," 31.14, Notice **ARC 3779B** Terminated **ARC 3974B** 2/2/05

EDUCATIONAL EXAMINERS BOARD[282]
EDUCATION DEPARTMENT[281]"umbrella"

Cross reference correction, 11.37, Filed **ARC 4006B** 2/16/05
Driving instructor qualifications, 21.1(1), Filed **ARC 4007B** 2/16/05

EDUCATION DEPARTMENT[281]
Petitions for rule making, 2.7(1), 2.18, Notice **ARC 3983B** 2/16/05
Certificate of need, 96.1, 96.4 to 96.8, Notice **ARC 3978B** 2/16/05

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]
Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"

Seal and certification block, 6.1(2), 6.1(4), Notice **ARC 3988B** 2/16/05

ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Special regulations and construction permit requirements for major stationary sources—nonattainment areas and prevention of significant deterioration (PSD) in air quality, 20.1, 22.4, 22.4(1) to 22.4(4), 22.5, 22.5(1) to 22.5(10), 22.6, 31.1, adopt ch 33, Notice **ARC 4005B** 2/16/05
Chemplex site in Clinton County added to list of protected water sources, 53.7(2), Notice **ARC 4003B** 2/16/05
Manure management plan records—date and rate of application of commercial nitrogen and phosphorus, 65.17(13)"e," Amended Notice **ARC 4004B** 2/16/05

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
Advisory opinions, 1.2(1), Filed **ARC 3999B** 2/16/05
Employee sales of goods or services, 1.7(7), Filed **ARC 4000B** 2/16/05
State party committees—disclosure of candidate ID numbers, 4.14(6), 4.15(5), 4.62(1), Filed **ARC 3997B** 2/16/05
Reporting of state party building fund transactions, 4.24, Filed **ARC 3996B** 2/16/05
Contributions by out-of-state committees, 4.32, Filed **ARC 3998B** 2/16/05

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351] (Cont'd)
Loans from executive branch lobbyists prohibited, 6.20, Filed **ARC 3995B** 2/16/05
Whistle-blower protection, 9.6, Filed **ARC 3994B** 2/16/05
Waiver of civil penalty for late-filed report, 15.2, Filed **ARC 4001B** 2/16/05

HUMAN SERVICES DEPARTMENT[441]
Food assistance eligibility and benefits—increase in utility and telephone allowances,
65.8(1)"a" and "b," 65.8(3), Notice **ARC 3966B**, also Filed Emergency **ARC 3968B** 2/2/05
Medicaid applications sent by fax, 75.52(4)"b," 76.1(2)"d" and "f,"
Filed Emergency After Notice **ARC 3967B** 2/2/05

INSPECTIONS AND APPEALS DEPARTMENT[481]
Critical access hospitals, 51.53(4), 51.53(5), Filed **ARC 3948B** 2/2/05
Governor's award for quality care, ch 54, Filed **ARC 3949B** 2/2/05

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Public records, 1.5, 1.7, 1.8, 8.1, 8.2, 8.3(1) to 8.3(5), 8.3(7), 8.12(1), 8.13(3),
8.14, Filed **ARC 3943B** 2/2/05

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Groundwater hazard statements, 9.1(4), 9.2(2), 9.2(3), Filed **ARC 4002B** 2/16/05

PROFESSIONAL LICENSURE DIVISION[645]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Mortuary science, 100.6(1)"c," 100.10(6)"a," chs 103 to 105, Notice **ARC 3985B** 2/16/05
Physician assistants, 326.8(4), Filed **ARC 3980B** 2/16/05
Athletic trainers, 351.1, 351.2(5), 351.2(8) to 351.2(11), 351.3(1), 351.3(2)"d,"
351.4(1), 351.4(2), 351.5, 351.6, 351.6(1)"a" and "g," 351.6(2), 351.7"6,"
351.10(6), 351.13(6), 352.1, 352.2(2), 352.3(2)"a," 352.5(1)"f," 352.6"6,"
352.10(5)"a," 354.1(2) to 354.1(10), Filed **ARC 3947B** 2/2/05

PUBLIC HEALTH DEPARTMENT[641]
Quarantine and isolation—model rule for local boards of health, 1.12, Filed **ARC 3963B** 2/2/05
Swimming pools and spas, ch 15, Notice **ARC 3970B** 2/2/05
Radiation, amendments to chs 38 to 42, 45, 46, Notice **ARC 3964B** 2/2/05
EMS provider education/training/certification, ch 131, Filed **ARC 3969B** 2/2/05
EMS—service program authorization, 132.1, 132.2, 132.2(2), 132.2(4), 132.2(6), 132.7(1),
132.7(3)"b," 132.8(1), 132.8(2), 132.8(3)"a," "h" and "l," 132.8(4)"g" and "h," 132.8(6)"a,"
132.8(7), 132.8(9), 132.9(2)"d," 132.9(6)"b"(1), 132.10(2), 132.10(3), 132.10(17),
132.14(2)"a" and "f," 132.16, Filed **ARC 3962B** 2/2/05
White flashing light authorization for EMS providers, 133.1, 133.4(3), Filed **ARC 3961B** 2/2/05
Trauma care facility categorization and verification, 134.1, 134.2(1)"b," 134.2(2),
134.2(3), 134.2(7), Filed **ARC 3960B** 2/2/05
Trauma triage and transfer protocols, 135.1, 135.2(1), Filed **ARC 3959B** 2/2/05
Trauma registry, 136.1, 136.2(1) to 136.2(3), 136.2(5)"b"(3), 136.2(7)"c," Filed **ARC 3958B** 2/2/05
Trauma education and training, 137.1, 137.2, 137.2(1)"c," 137.2(2), 137.3, 137.3(3), Filed **ARC 3957B** 2/2/05
Definition of "emergency medical care provider," 138.1, Filed **ARC 3954B** 2/2/05
Iowa law enforcement emergency care provider, 139.1, 139.3, 139.5, 139.6(2), Filed **ARC 3956B** 2/2/05
EMS system development grants fund, 140.1, 140.4, 140.4(1) to 140.4(3),
140.5, 140.6, Filed **ARC 3953B** 2/2/05
Love our kids grant—definition of "service program," 141.1, Filed **ARC 3952B** 2/2/05
Automated external defibrillator grant program, adopt ch 143, Filed **ARC 3955B** 2/2/05
Certificate of need program, 202.1(9), 202.1(13), 202.1(14), Filed **ARC 3951B** 2/2/05
Certificate of need program—reestablishment of deleted beds in hospitals, 202.1(9), Notice **ARC 3950B** 2/2/05

PUBLIC SAFETY DEPARTMENT[661]
Iowa sex offender registry, rescind 8.301 to 8.305, adopt ch 83, Filed **ARC 3987B** 2/16/05

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INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"
Occupational and vendor licensing; harness racing officials;
thoroughbred racing, 6.16(5)"e," 6.17(1), 6.19(1), 6.20(1), 6.23(1)"a,"
6.25"3," 9.4(1)"i" and "j," 10.4(5)"g"(4), Notice **ARC 3986B** 2/16/05

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Investment tax credits; corporate tax credits, 42.2(10), 42.17, 42.19(2)"a," 52.10(2), 52.10(5), 52.14, 52.20, 52.22(2)"a," 52.22(3), 58.9, Filed **ARC 3971B** 2/2/05
Inheritance tax, 86.2(1)"c," 86.9, 86.14(7), Notice **ARC 3972B** 2/2/05

SOIL CONSERVATION DIVISION[27]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"
Coal mining—update of references to CFR, 40.1(1), 40.1(4), 40.3, 40.4, 40.4(2), 40.4(3), 40.4(9), 40.4(11), 40.5, 40.6, 40.6(2), 40.7, 40.11 to 40.13, 40.21, 40.21(4) to 40.21(6), 40.22, 40.22(2), 40.23, 40.30, 40.30(1), 40.30(4), 40.31, 40.32, 40.32(1), 40.32(2), 40.32(4), 40.33, 40.34, 40.34(2), 40.34(3), 40.35, 40.35(3), 40.36, 40.37, 40.37(4), 40.38, 40.38(2), 40.38(3), 40.39, 40.41, 40.41(3), 40.51, 40.61, 40.61(4), 40.62, 40.63, 40.63(6), 40.63(9), 40.64, 40.64(4), 40.64(6), 40.65 to 40.67, 40.71, 40.73(2)"g," 40.73(4)"d," 40.74, 40.74(9), 40.75, 40.75(2), 40.81, 40.82, 40.92(8), Notice **ARC 3945B** 2/2/05

TRANSPORTATION DEPARTMENT[761]
Regulations applicable to carriers, 520.1(1)"a" and "b," 520.5, Notice **ARC 3944B** 2/2/05
Motor carrier regulations—reference to CFR updated, 529.1, Notice **ARC 3991B** 2/16/05
Motorcycle rider education, 635.3(2)"f," 635.3(3)"c," 635.4(1)"e," 635.5, Filed **ARC 3946B** 2/2/05

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COMMERCE DEPARTMENT[181]"umbrella"
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Unauthorized changes in telecommunications service, 22.23(1), 22.23(2)"a"(3), 22.23(2)"d"(4)"2," 22.23(2)"d"(5)"2," 22.23(2)"e," Filed **ARC 3989B** 2/16/05

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.
EDITOR'S NOTE: Terms ending April 30, 2007.

Senator Jeff Angelo
808 West Jefferson
Creston, Iowa 50801

Senator Michael Connolly
3458 Daniels Street
Dubuque, Iowa 52002

Senator John P. Kibbie
P.O. Box 190
Emmetsburg, Iowa 50536

Senator Mary Lundby
P.O. Box 648
Marion, Iowa 52302-0648

Senator Paul McKinley
21884 483rd Lane
Chariton, Iowa 50049

Joseph A. Royce
Legal Counsel
Capitol, Room 116A
Des Moines, Iowa 50319
Telephone (515)281-3084
Fax (515)281-5995

Representative Danny Carroll
244 400th Avenue
Grinnell, Iowa 50112

Representative George Eichhorn
P.O. Box 140
Stratford, Iowa 50249

Representative Marcella R. Frevert
P.O. Box 324
Emmetsburg, Iowa 50536

Representative David Heaton
510 East Washington
Mt. Pleasant, Iowa 52641

Representative Geri Huser
213 Seventh Street NW
Altoona, Iowa 50009

Gary Dickey Jr.
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 11
Des Moines, Iowa 50319

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
BLIND, DEPARTMENT FOR THE[111]		
Department facility operations, 1.4, 1.13, 7.17 IAB 2/16/05 **ARC 3984B**	Director's Conference Room, First Floor 524 Fourth St. Des Moines, Iowa	March 8, 2005 2 p.m.
DENTAL EXAMINERS BOARD[650]		
Authorization of registered dental assistant to provide intraoral suctioning under the general supervision of a dentist, 1.1, 20.4(2) IAB 2/2/05 **ARC 3976B**	Board Conference Room Suite D 400 SW Eighth St. Des Moines, Iowa	February 22, 2005 10 a.m.
Mandatory reporting, 10.6(4), 30.4, 31.13, 31.14 IAB 2/2/05 **ARC 3973B**	Board Conference Room Suite D 400 SW Eighth St. Des Moines, Iowa	February 22, 2005 10 a.m.
Temporary permit to provide volunteer services, 13.3, 15.1 IAB 2/2/05 **ARC 3975B**	Board Conference Room Suite D 400 SW Eighth St. Des Moines, Iowa	February 22, 2005 10 a.m.
EDUCATION DEPARTMENT[281]		
Agency procedure for rule making, 2.7(1), 2.18 IAB 2/16/05 **ARC 3983B**	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	March 8, 2005 11 a.m.
Local option sales and services tax for school infrastructure, 96.1, 96.4 to 96.8 IAB 2/16/05 **ARC 3978B** **(ICN Network)**	Grimes State Office Bldg. Des Moines, Iowa	March 9, 2005 12 noon
	AEA 1 1400 Second St. Elkader, Iowa	March 9, 2005 12 noon
	AEA 2 3712 Cedar Heights Dr. Cedar Falls, Iowa	March 9, 2005 12 noon
	AEA 4 1382 Fourth Ave. NE Sioux Center, Iowa	March 9, 2005 12 noon
	Fort Dodge High School 104 S. 17th St. Fort Dodge, Iowa	March 9, 2005 12 noon
	AEA 9 729 21st St. Bettendorf, Iowa	March 9, 2005 12 noon
	AEA 10 4401 Sixth St. SW Cedar Rapids, Iowa	March 9, 2005 12 noon

EDUCATION DEPARTMENT[281] (Cont'd)
(ICN Network)

	AEA 11 6500 Corporate Dr. Johnston, Iowa	March 9, 2005 12 noon
	Sioux City Central Campus 1121 Jackson St. Sioux City, Iowa	March 9, 2005 12 noon
	AEA 13 24997 Highway 92 Council Bluffs, Iowa	March 9, 2005 12 noon
	AEA 14 1405 N. Lincoln Creston, Iowa	March 9, 2005 12 noon
	AEA 15 2814 N. Court St. Ottumwa, Iowa	March 9, 2005 12 noon
	AEA 16 3601 W. Avenue Rd. Burlington, Iowa	March 9, 2005 12 noon
	AEA 8 Highway 18 and Second St. Cylinder, Iowa	March 9, 2005 12 noon
	AEA 267 9184B 265th St. Clear Lake, Iowa	March 9, 2005 12 noon
	AEA 267 909 S. 12th St. Marshalltown, Iowa	March 9, 2005 12 noon

ENVIRONMENTAL PROTECTION COMMISSION[567]

Air quality, 20.1, 22.4 to 22.6, 31.1, ch 33 IAB 2/16/05 **ARC 4005B**	Conference Rooms Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	March 18, 2005 10 a.m.
	Gritter Room, Iowa Hall Kirkwood Community College Cedar Rapids, Iowa	March 23, 2005 1 p.m.
Protected water sources—Chemplex site, Clinton County, 53.7(2) IAB 2/16/05 **ARC 4003B**	Garner Hall 313 Ninth Ave. Camanche, Iowa	March 10, 2005 7 p.m.
Manure management plan records, 65.17(13) IAB 2/16/05 **ARC 4004B** (See also **ARC 3807B**, IAB 11/10/04)	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	March 8, 2005 1 p.m.

HUMAN SERVICES DEPARTMENT[441]

Disability services management— minimum data set, 25.41 IAB 1/19/05 **ARC 3936B**	First Floor Southeast Conference Rm. Hoover State Office Bldg. Des Moines, Iowa	February 16, 2005 9 to 10:30 a.m.

PROFESSIONAL LICENSURE DIVISION[645]

Mortuary science examiners, 100.6(1), 100.10(6), chs 103 to 105 IAB 2/16/05 **ARC 3985B**	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	March 8, 2005 9 to 10 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Swimming pools and spas, ch 15 IAB 2/2/05 **ARC 3970B**	Third Floor Conference Room Room 518 Lucas State Office Bldg. Des Moines, Iowa	February 22, 2005 1 p.m.
Radiation, amendments to chs 38 to 42, 45, 46 IAB 2/2/05 **ARC 3964B**	Conference Room, Suite D 401 SW Seventh St. Des Moines, Iowa	February 22, 2005 8:30 a.m.

RACING AND GAMING COMMISSION[491]

Licensing; harness racing; thoroughbred racing, 6.16, 6.17, 6.19, 6.20, 6.23, 6.25, 9.4, 10.4 IAB 2/16/05 **ARC 3986B**	Suite B 717 E. Court Des Moines, Iowa	March 8, 2005 9 a.m.

SOIL CONSERVATION DIVISION[27]

Coal mining, amendments to ch 40 IAB 2/2/05 **ARC 3945B**	First Floor Conference Room, West Half Wallace State Office Bldg. Des Moines, Iowa	February 22, 2005 1 p.m.

TRANSPORTATION DEPARTMENT[761]

Regulations applicable to carriers, 520.1, 520.5 IAB 2/2/05 **ARC 3944B**	DOT Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	February 24, 2005 10 a.m. (If requested)
Motor carrier regulations, 529.1 IAB 2/16/05 **ARC 3991B**	DOT Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	March 10, 2005 10 a.m. (If requested)

UTILITIES DIVISION[199]

Revised procedural rules, 1.8(4); chs 7, 26; 32.9(4) IAB 2/16/05 **ARC 3990B**	Hearing Room 350 Maple St. Des Moines, Iowa	April 26, 2005 10 a.m.

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

"Umbrella" agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory "umbrellas."

Other autonomous agencies which were not included in the original reorganization legislation as "umbrella" agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
- Agricultural Development Authority[25]
- Soil Conservation Division[27]

ATTORNEY GENERAL[61]
AUDITOR OF STATE[81]
BEEF INDUSTRY COUNCIL, IOWA[101]
BLIND, DEPARTMENT FOR THE[111]
CAPITAL INVESTMENT BOARD, IOWA[123]
CITIZENS' AIDE[141]
CIVIL RIGHTS COMMISSION[161]
COMMERCE DEPARTMENT[181]
- Alcoholic Beverages Division[185]
- Banking Division[187]
- Credit Union Division[189]
- Insurance Division[191]
- Professional Licensing and Regulation Division[193]
  - Accountancy Examining Board[193A]
  - Architectural Examining Board[193B]
  - Engineering and Land Surveying Examining Board[193C]
  - Landscape Architectural Examining Board[193D]
  - Real Estate Commission[193E]
  - Real Estate Appraiser Examining Board[193F]
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- Utilities Division[199]

CORRECTIONS DEPARTMENT[201]
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- Arts Division[222]
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ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
- City Development Board[263]
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EDUCATION DEPARTMENT[281]
- Educational Examiners Board[282]
- College Student Aid Commission[283]
- Higher Education Loan Authority[284]
- Iowa Advance Funding Authority[285]
- Libraries and Information Services Division[286]
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EGG COUNCIL, IOWA[301]
ELDER AFFAIRS DEPARTMENT[321]
EMPOWERMENT BOARD, IOWA[349]
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GENERAL SERVICES DEPARTMENT[401]
HUMAN INVESTMENT COUNCIL[417]
HUMAN RIGHTS DEPARTMENT[421]
- Community Action Agencies Division[427]
- Criminal and Juvenile Justice Planning Division[428]
- Deaf Services Division[429]
- Persons With Disabilities Division[431]
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- Status of African-Americans, Division on the[434]
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HUMAN SERVICES DEPARTMENT[441]
INFORMATION TECHNOLOGY DEPARTMENT[471]
INSPECTIONS AND APPEALS DEPARTMENT[481]
    Employment Appeal Board[486]
    Foster Care Review Board[489]
    Racing and Gaming Commission[491]
    State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
    Appeal Board, State[543]
    City Finance Committee[545]
    County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
VOLUNTEER SERVICE, IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
    Energy and Geological Resources Division[565]
    Environmental Protection Commission[567]
    Natural Resource Commission[571]
    Preserves, State Advisory Board for[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
        BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
    Homeland Security and Emergency Management Division[605]
    Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
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PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
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REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
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TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
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TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
    Labor Services Division[875]
    Workers' Compensation Division[876]
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        Workforce Development Center Administration Division[877]

ARC 3981B

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 8A.104, the Administrative Services Department hereby gives Notice of Intended Action to amend Chapter 9, "Waivers," Iowa Administrative Code.

This amendment is proposed to eliminate the authority of the Director to initiate waivers on the Director's own motion. This change is based on AT&T Communications of the Midwest, Inc. v. Iowa Utilities Board, et al., 687 N.W.2d 554 (Iowa 2004) that found that the ability to grant a waiver sua sponte is beyond the scope of authority granted to a state agency by Iowa Code section 17A.9A.

Public comments concerning the proposed amendment will be accepted until 4:30 p.m. on March 8, 2005. Interested persons may submit written, oral or electronic comments by contacting Carol Stratemeyer, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104; telephone (515)281-6134; fax (515)281-6140; E-mail Carol.Stratemeyer@iowa.gov.

This amendment is intended to implement Iowa Code section 17A.9A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule 11—9.4(17A,8A), introductory paragraph, as follows:

11—9.4(17A,8A) Granting a waiver. In response to a petition completed pursuant to rule 9.6(17A,8A) ~~or on the director's own motion~~, the director may, in the director's sole discretion, issue an order waiving in whole or in part the requirements of a rule.

ARC 3984B

BLIND, DEPARTMENT FOR THE[111]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 216B.6, the Department for the Blind hereby gives Notice of Intended Action to amend Chapter 1, "Administrative Organization and Procedures," and Chapter 7, "Business Enterprises Program," Iowa Administrative Code.

The amendments incorporate changes to (1) prohibit a member of the public from carrying dangerous weapons in Department facilities whether or not the individual possesses a permit to carry a weapon, (2) prohibit smoking in Department facilities, and (3) eliminate contested case hearings as a precondition for disciplinary action involving a blind food service licensee. The Department of Administrative Services previously adopted similar rules concerning smoking, building access and security on the capitol complex, and dangerous weapons as pertaining to buildings and grounds on the capitol complex.

Any interested person may make written suggestions or comments on these proposed amendments on or before March 8, 2005. Such written comments should be directed to the Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309-2364, or sent by electronic mail to Snethen.Bruce@blind.state.ia.us or by facsimile to (515) 281-1263.

There will be a public hearing on March 8, 2005, at 2 p.m. in the Director's Conference Room, First Floor, Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309-2364, at which time persons may present their views either orally or in writing.

At the public hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Department for the Blind and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 142B, Executive Order Number 68 signed November 23, 1998, by Governor Terry E. Branstad, and Iowa Code section 216B.3, subsection 6.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **111—1.4(216B)** by adding the following **new** definitions in alphabetical order:

"Dangerous weapon" means any instrument or device designed primarily for use in inflicting death or injury upon a human being or animal, and which is capable of inflicting death upon a human being when used in the manner for which it was designed. Additionally, any instrument or device of any sort whatsoever which is actually used in such a manner as to indicate that the person possessing the instrument or device intends to inflict death or serious injury upon the other, and which, when so used, is capable of inflicting death upon a human being, is a dangerous weapon. Dangerous weapons include, but are not limited to, any offensive weapon as defined in Iowa Code section 724.1, pistol, revolver, or other firearm, dagger, razor, stiletto, switchblade knife, or knife having a blade exceeding five inches in length.

"Facilities" means the premises at 524 Fourth Street, Des Moines, Iowa, and any other space occupied by the department for the blind.

"Public" means a person who is not employed by the state of Iowa.

ITEM 2. Amend 111—Chapter 1 by adopting the following **new** rule:

BLIND, DEPARTMENT FOR THE[111](cont'd)

111—1.13(216B) Department facility operations.

1.13(1) Dangerous weapons. No member of the public shall carry a dangerous weapon in department facilities. This provision applies to any member of the public whether or not the individual possesses a valid Iowa permit to carry weapons. This provision does not apply to:

a. A peace officer as defined in Iowa Code section 801.4 or a member of the armed forces of the United States or of the national guard, when the person's duties or lawful activities require or permit possession of a dangerous weapon.

b. A person possessing a valid Iowa professional permit to carry a weapon whose duties require that person to carry a dangerous weapon.

c. A person who possesses a dangerous weapon for any purpose authorized by a state agency to further the statutory or regulatory responsibilities of that agency. An authorization issued pursuant to this paragraph shall not become effective until it has been issued in writing to the person or persons to whom it applies and until copies of the authorization have been received by the director and by the commissioner of public safety.

d. Members of recognized military veterans organizations performing honor guard service as provided in 2001 Iowa Acts, chapter 96, section 1.

Violation of this subrule is a simple misdemeanor, pursuant to Iowa Code section 8A.322, and may result in the denial of access to a state building, filing of criminal charges or expulsion from the grounds of the department's facilities, or any combination thereof, of any individual who knowingly violates the subrule. In addition, any weapon found in the possession of a member of the public in violation of this subrule may be confiscated. Charges may be filed under any other criminal statute if appropriate. Officers employed by or under the supervision of the department of public safety shall have the authority to enforce this subrule. Peace officers employed by other agencies shall have the authority to enforce this subrule at the request of the commissioner of public safety or in response to a request for assistance from an officer employed by the department of public safety or at the request of the director or the director's designee.

1.13(2) Building access and security. The department shall take reasonable and appropriate measures to ensure the safety of persons and property in department facilities. These measures may include, but are not limited to, the following:

a. Requiring any member of the public entering department facilities to (1) provide identification upon request; (2) allow the member of the public to be scanned with metal detecting equipment; and (3) allow any parcel, package, luggage, purse, or briefcase that the person is bringing into department facilities to be examined with X-ray equipment or to have the contents thereof examined, or both.

b. Requiring any member of the public who is inside department facilities outside normal business hours, other than when facilities are open to the public during a scheduled event, to provide identification and to state the nature of the person's business in the facility. A member of the public who is in a state building on the capitol complex outside normal business hours, other than during a scheduled event, and who does not have authorization to be on the premises may be required to exit the building and be escorted from the building.

c. Limiting public access to department facilities to selected entrances. Access to each building through at least one entrance accessible to persons with disabilities shall be maintained.

d. Limiting hours during which public access to department facilities is allowed.

e. Confiscating any container including, but not limited to, packages, bags, briefcases, or boxes that are left in public areas when department facilities are not open to the public. Any confiscated container may be searched or destroyed, or both, or may be returned to the owner. Any container that is left unattended in a public area during hours in which department facilities are open to the public may be examined.

Violation of this subrule is a simple misdemeanor, pursuant to Iowa Code section 8A.322, and may result in the denial of access to a state building, filing of criminal charges or expulsion from department facilities, or any combination thereof, of the individual who knowingly violates the subrule. Charges may be filed under any other criminal statute if appropriate. Officers employed by or under the supervision of the department of public safety shall have the authority to enforce this subrule. Peace officers employed by other agencies shall also have the authority to enforce this subrule.

1.13(3) Access barriers. The director may cause the temporary or permanent placement of barricades, ropes, signs, or other barriers to limit access to certain parts of department facilities. Unauthorized persons beyond the barriers may be removed with the assistance of law enforcement officers or charged with a criminal offense if appropriate, or both.

1.13(4) Smoking. Use of tobacco products is prohibited in all department facilities, unless otherwise designated by appropriate signs.

ITEM 3. Amend rule 111—7.17(216D) as follows:

111—7.17(216D) Disciplinary action. ~~Following the opportunity for a contested case hearing except in the case of an emergency, and in consultation with the state committee of blind vendors, the~~ *The* department may impose any or all of the following disciplinary sanctions as appropriate:

7.17(1) Fines. Monetary fines shall be imposed by the department for the late filing of required reports or late payment of fees.

7.17(2) Probation. The department may place a vendor on probation of the operating agreement for a period not to exceed one year. The probationary period may include an emergency suspension of the operating agreement when appropriate for a period not to exceed 30 days. If the operator is deemed to be on probation after the end of that year, the operating agreement will be terminated.

a. Probation may occur when the department determines that any of the following conditions exist:

(1) The vendor has repeated or continued violations of the terms of the operating agreement;

(2) The vendor has repeated or continued violations of the vending facility permit;

(3) The vendor is temporarily ineligible to participate in the business enterprises program;

(4) The vendor is absent without leave; or

(5) The health and safety of the public may be jeopardized by the continued operation of the vending facility by the vendor.

b. During the period of suspension, the vendor shall relinquish all rights and privileges of the vendor license.

c. The department and the vendor shall establish a clearly stated written plan and timetable for correction of the perceived deficiencies after suspension.

NOTICE—CIVIL REPARATIONS TRUST FUND

Pursuant to Iowa Administrative Code 361—subrule 12.2(1), the Executive Council gives Notice that the Civil Reparations Trust Fund balance as of December 31, 2004, is approximately $260.00. Money in the Civil Reparations Trust Fund is available for use for indigent civil litigation programs or insurance assistance programs. Application forms are available in the office of the State Treasurer by contacting GeorgAnna Madsen, Executive Secretary, State Capitol, Room 114, Des Moines, Iowa 50319; telephone (515)281-5368. Applications must be filed on the thirtieth day after the date of publication of this Notice in the Iowa Administrative Bulletin, or on the thirtieth day after the date affixed to the Notice sent by first-class mail, whichever is later. Any person/company that would like to receive future notices should make request in writing to the above-mentioned contact. Rules regarding the Civil Reparations Trust Fund can be found at 361 IAC Chapter 12.

ARC 3983B

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the Iowa State Board of Education hereby gives Notice of Intended Action to amend Chapter 2, "Agency Procedure for Rule Making," Iowa Administrative Code.

The proposed amendments will conform the chapter to Iowa Code section 25B.6 and to the language in the uniform rules on petitions for rule making.

Written comments concerning the proposed amendments will be accepted until March 8, 2005. Comments should be directed to Carol J. Greta, Legal Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146; (515)281-5295; or by E-mail to carol.greta@iowa.gov.

A public hearing will be held on March 8, 2005, at 11 a.m. in the State Board Room, Grimes State Office Building, Second Floor, Des Moines, Iowa.

Individuals with special needs who wish to attend the public hearing should notify the Department by February 28, 2005.

These amendments are intended to implement Iowa Code section 25B.6.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 2.7(1) as follows:

2.7(1) A proposed rule that ~~mandates~~ *necessitates* additional combined *annual* expenditures ~~exceeding~~ *of at least* $100,000*, or additional combined expenditures of at least $500,000 within five years*, by all affected *persons*, political subdivisions, or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

ITEM 2. Rescind rule 281—2.18(17A) and adopt the following **new** rule in lieu thereof:

281—2.18(17A) Petition for rule making. A petition requesting the adoption, amendment, or repeal of a rule shall be filed with the department of education at the Grimes State Office Building, Second Floor, Des Moines, Iowa 50319-0146. A petition is deemed filed when it is received by that office. The department of education shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF EDUCATION

Petition by (Name of Petitioner) for the Adoption/ Amendment/Repeal of (Cite rule involved).	PETITION FOR RULE MAKING

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the petition is based.
2. The precise citation to the present rule if the petition is for the amendment or repeal of the same.
3. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, and any other relevant law.
4. A summary of the reasons for requesting the adoption, amendment or repeal of a rule.
5. Full disclosure of the petitioner's interest in the outcome of the petition.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the issue(s) raised by the petition and whether, to the petitioner's knowledge, those issues have been decided by, are pending determination by, or are under investigation by, any other governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the issue(s) presented in the petition.

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

ARC 3978B

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 96, "Local Option Sales and Services Tax for School Infrastructure," Iowa Administrative Code.

These amendments are intended to implement 2003 Iowa Acts, chapter 157 [Iowa Code chapter 423E], as passed by the Eightieth General Assembly. The proposed amendments establish standards for the certificate of need required of school districts to expend funds received from the supplemental school infrastructure amount.

Interested persons may comment on the proposed amendments on or before March 9, 2005. Written or oral comments should be directed to Su McCurdy, Iowa Department of Education, Grimes State Office Building, Des Moines, Iowa 50319; E-mail su.mccurdy@iowa.gov; or telephone (515) 281-4738.

There will be a public hearing held over the Iowa Communications Network (ICN) on March 9, 2005, beginning at 12 noon at which persons may present their comments orally. Access to the public hearing will be available through the following sites:

Department of Education Grimes State Office Bldg. Des Moines (Origination site)	Area Education Agency 1 1400 2nd Street Elkader
Area Education Agency 2 3712 Cedar Heights Drive Cedar Falls	Area Education Agency 4 1382 4th Avenue NE Sioux Center
Fort Dodge High School 104 South 17th Street Fort Dodge	Area Education Agency 9 729 21st Street Bettendorf
Area Education Agency 10 4401 6th Street SW Cedar Rapids	Area Education Agency 11 6500 Corporate Drive Johnston
Sioux City Central Campus 1121 Jackson Street Sioux City	Area Education Agency 13 24997 Highway 92 Council Bluffs
Area Education Agency 14 1405 North Lincoln Creston	Area Education Agency 15 2814 N. Court Street Ottumwa
Area Education Agency 16 3601 West Avenue Road Burlington	Area Education Agency 8 Highway 18 and 2nd Street Cylinder
Area Education Agency 267 9184B 265th Street Clear Lake	Area Education Agency 267 909 S. 12th Street Marshalltown

Individuals with special needs who wish to attend the public hearing should notify the Department by February 28, 2005.

These amendments are intended to implement 2003 Iowa Acts, chapter 157 [Iowa Code chapter 423E].

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **281—96.1(422E)** by adding the following **new** definitions in alphabetical order:

"Certificate of need" means written approval that a school district submits to the department of education on application forms prepared for that purpose to expend the supplemental school infrastructure amount for new construction or for payments for bonds issued for new construction against the supplemental school infrastructure amount.

"Guaranteed school infrastructure amount" means for a school district the statewide tax revenues per student, multiplied by the quotient of the tax rate percent imposed in the county, divided by 1 percent and multiplied by the quotient of the number of quarters the tax is imposed during the fiscal year divided by four quarters.

"New construction" means any erection of a facility or any modification or addition to a facility except for repairing existing schoolhouses or school buildings or for construction necessary for compliance with the federal Americans with Disabilities Act pursuant to 42 U.S.C Section 12101-12117.

"Reconstruction" means rebuilding or restoring as an entity a thing that was lost or destroyed.

"Repair" means restoring an existing structure or thing to its original condition, as near as may be, after decay, waste, injury, or partial destruction, but does not include maintenance.

"Revenue purpose statement" means a document prepared by the school district indicating the specific purpose or purposes for which the local sales and services tax for school infrastructure revenue and the supplemental school infrastructure amount will be expended; which was posted at the appropriate polling places of each school district during the hours that the polls were open; and which was published in a newspaper of general circulation in the school district no sooner than 20 days and no later than 10 days prior to the local option sales and services tax for school infrastructure election.

"Sales tax capacity per student" means for a school district the estimated amount of revenues that a school district receives or would receive if a local sales and services tax for school infrastructure purposes is imposed at 1 percent in the county, divided by the school district's actual enrollment.

"School budget review committee" or "SBRC" means a committee that is established under Iowa Code section 257.30 in the department of education and that consists of the director of the department of education, the director of the department of management, and three members who are knowledgeable in the areas of Iowa school finance or public finance issues and who are appointed by the governor to represent the public.

"School infrastructure" means those activities for which a school district is authorized to contract indebtedness and issue general obligation bonds under Iowa Code section 296.1, except those activities related to a teacher's or superintendent's home or homes. These activities include the construction, reconstruction, repair, demolition, purchase, or remodeling of schoolhouses, stadiums, gymnasiums, fieldhouses, and bus garages; the procurement of schoolhouse sites and site improvements; and the payment or retirement of general obligation bonds issued for school infrastructure purposes or of local option sales and services tax for school infrastructure revenue bonds. For local option sales and services tax for

school infrastructure elections passed on or after May 30, 2003, the definition of school infrastructure also includes activities for which revenues under Iowa Code sections 298.3 and 300.2 may be spent and property tax relief for the debt service property tax levy, regular physical plant and equipment property tax levy, voter-approved physical plant and equipment income surtax and property tax levy, and the public education and recreation property tax levy.

"Site improvement" means grading, landscaping, paving, seeding, and planting of shrubs and trees; constructing sidewalks, roadways, retaining walls, sewers and storm drains, and installing hydrants; surfacing and soil treatment of athletic fields and tennis courts; exterior lighting, including athletic fields and tennis courts; furnishing and installing flagpoles, gateways, fences, and underground storage tanks which are not parts of building service systems; demolition work; and special assessments against the school district for public improvements defined in Iowa Code section 384.37.

"Statewide tax revenues per student" means $575 per student.

"Supplemental school infrastructure amount" means the guaranteed school infrastructure amount for the school district less the pro rata share of local sales and services tax for school infrastructure purposes.

ITEM 2. Amend 281—Chapter 96 by adding the following **new** rules:

281—96.4(423E) Application process.

96.4(1) Application period. School districts may submit applications for certificates of need between 8 a.m. and 4:30 p.m. Monday through Friday, except on holidays. Applications shall be hand-delivered or postmarked no later than eight weeks prior to a regularly scheduled meeting of the SBRC. The SBRC holds regularly scheduled meetings on the second Monday of September, December, March, and May.

96.4(2) Application form. The department shall make available an application form to Iowa public school districts at least 30 days prior to the end of the application period. Each applicant school district shall use the form prepared for this purpose and in the manner prescribed by the department. A school district may submit only one application during the application period. The application form shall include, but shall not be limited to, the following information:

a. The total capital investment of the project. If the project is in collaboration with other public or private entities, a school district shall include the following information:

(1) Identification of the collaborating public or private entities;

(2) Total cost of the collaborative project; and

(3) Total cost of the school district's portion of the project.

b. The infrastructure needs of a school district specific to the application, especially the fire and health safety needs, including the extent to which the project would allow the school district to meet its infrastructure needs on a long-term basis. If a school district's needs include fire and health safety needs, the school district shall attach to its application form a copy of the citation from the fire marshal for the safety deficiency or evidence of consultation with the fire marshal or other qualified inspector related to the health safety deficiency. A school district shall include evidence of public involvement in assessing the need for this project.

c. The description of need including documentation of the infeasibility of remodeling, reconstructing or repairing the existing structure rather than implementing this project and a description of any alternatives considered and the reasons for rejection.

d. Enrollment trends in a school district showing a five-year history and five years of projected enrollment by grade. If a school district uses enrollment projections other than those prepared by the department, the school district must submit a description of the basis for those projections.

e. If a school district's enrollment in the current year or any of the five years of projected enrollments is fewer than 300 students or fewer than 30 students for any grade, the school district shall attach a copy of a feasibility study pursuant to Iowa Code subsection 256.9(34) or similar study conducted within the past three years with an explanation of how the study supports the project that is the subject of the application.

f. A description of the nature of the project and its relationship to improving educational opportunities for students including alignment with school district student achievement goals and including the school district's ability to meet or exceed the educational standards. A school district shall provide:

(1) A list of waivers applied for and granted to the school district or any deficiencies from educational standards if no waiver was granted.

(2) A list of courses offered by major curricular area in grades 9 through 12. The list shall include five years of history and three years of projected curricula.

(3) A list of current and projected staffing patterns including assignments and licensure.

g. Description of transportation barriers, if any, to the current site and to the proposed site and the distance in miles and in travel time from the nearest and furthest boundaries of the school district to the current site and the proposed site.

h. Evidence of financial stability. The school district shall provide:

(1) Calculation of unspent balance on the generally accepted accounting principles (GAAP) basis. The calculation shall include five years of history and three years of projected balances. The calculation of budget authority shall show and project the effect of the phase out of the budget guarantee. Projected allowable growth shall be that known or generally anticipated at the time of the application. If the percent of allowable growth is not known or anticipated, an allowable growth of no more than 2 percent shall be utilized in the annual projections.

(2) If the unspent balance is negative in any current or projected year on the GAAP basis, the school district shall include a copy of the corrective action plan, if any, submitted to the SBRC.

(3) Calculation of unreserved fund balance on the GAAP basis by fund. The calculation shall include five years of history and three years of projected balances.

i. If a school district currently has bonded indebtedness, the voter-approved physical plant and equipment levy, or the local option sales and services tax for school infrastructure, or categorical funding for school infrastructure, the school district shall include a statement identifying the implementation date, final year of the bonded indebtedness or the final year of the levy or tax, and the levy rate. The school district shall list any obligations against those current balances and future revenues. The school district shall attach a copy of the local option sales and services tax for school infrastructure ballot, the school district's revenue purpose statement, if any, and a list of the tax capacity per student by each county in which the school district is located.

j. A comprehensive, districtwide infrastructure plan if the school district has an infrastructure plan. The school district shall include the date that the plan was adopted by the board, an executive summary of the plan, and a description of how the project fits within the infrastructure plan.

k. A five-year history of significant infrastructure maintenance and repair.

l. A statement certifying the accuracy of the information contained in the application.

96.4(3) Board minutes. A school district that is submitting an application for certificate of need shall submit with its application a copy of the minutes of the board of director's meeting showing that the board has authorized the application and the project. The section of the board minutes containing this information shall be marked in such a way as to make it easily identifiable.

96.4(4) Number of copies. A school district that is submitting an application for certificate of need shall submit three complete sets of the application forms and board minutes with original signatures on the application forms.

96.4(5) Reapplication. A school district that is not successful in obtaining a certificate of need for the project that is the subject of the application may apply for a certificate of need in succeeding application periods if its circumstances change substantially.

96.4(6) Application timeline. A school district shall submit an application for a certificate of need either:

a. When the school district has received a supplemental amount that it intends to accumulate for new construction or for payment of debt related to new construction; or

b. When the school district board has accumulated supplemental amounts and wants to proceed with the new construction project or debt issuance related to new construction, whichever occurs first.

96.4(7) Supplemental amount restrictions. All projects included in the application must be consistent with the provisions of the Americans with Disabilities Act and the Rehabilitation Act of 1973, Section 504, and Iowa Code chapter 104A.

281—96.5(423E) Review process.

96.5(1) Task force. The department shall form a task force to review applications for certificate of need and to provide recommendations to the school budget review committee. The department shall invite participants from large, medium, and small school districts, the state fire marshal's office, education and professional organizations, and other individuals knowledgeable in school infrastructure and construction issues. The department, in consultation with the task force, shall establish the parameters and criteria for awarding grants based on information listed in Iowa Code section 423E.4, subsection 6, which includes required consideration of the following:

a. Enrollment trends in the grades that will be served at the new construction site.

b. The infeasibility of remodeling, reconstructing, or repairing existing buildings.

c. The fire and health safety needs of the school district.

d. The distance, convenience, cost of transportation, and accessibility of the new construction site to the students to be served at the new construction site.

e. Unavailability of alternative, less costly, or more effective means of serving the needs of the students.

f. The financial condition of the school district, including the effect of the decline of the budget guarantee and unspent balance.

g. Broad and long-term ability of the school district to support the facility and the quality of the academic program.

h. Cooperation with other educational entities including other school districts, area education agencies, postsecondary institutions, and local communities.

96.5(2) Task force review. The task force, or a subcommittee of the task force, and its designees, shall review each application and make recommendations to the school budget review committee regarding approval of certificates of need based on the evidence provided by the applicant pursuant to subrule 96.4(2) and the criteria listed in subrule 96.5(1). More than one member of the task force or subcommittee of the task force and its designees shall review each application. A reviewer shall not review any application in which the reviewer has a conflict of interest.

96.5(3) Approval process. Applications shall be reviewed and recommended for approval or denial based on any or all of the following individual or collective criteria. Each applicable criterion shall be scored on a scale of zero to ten. Applicable scores shall be averaged. Nonapplicable criteria shall not be used in determining the average score. An application shall have a minimum average score of five to be eligible to be recommended for approval. If an application receives a score of zero on one or more applicable criteria, the application shall not be recommended for approval. A recommendation for approval by the task force does not constitute final approval of the application. The following categories on the application shall be evaluated and scored:

a. Infrastructure needs the project proposes to alleviate. Special consideration shall be given to infrastructure needs that relate to fire or health safety issues.

b. Evidence that remodeling, reconstructing, or repairing the existing buildings is not feasible.

c. Unavailability of alternative, less costly, or more effective means of serving student needs.

d. Improvement of transportation distance, convenience, cost and accessibility with the new construction.

e. Financial condition of the school district. A school district affected by the decline of the budget shall submit information on the impact of the budget guarantee change.

f. Evidence that the proposed project will improve educational opportunities for students and enable the school district to meet or exceed educational standards.

g. Current comprehensive, districtwide infrastructure plan and the description of how this project fits within that plan.

h. Description of innovative collaboration with one or more other public or private entities.

96.5(4) Ineligibility for approval. If either of the following two descriptions applies to the school district, the school district shall not be eligible for a certificate of need unless a feasibility study conducted within the past three years pursuant to Iowa Code subsection 256.9(34) and the AEA plan pursuant to Iowa Code sections 275.1 to 275.4 determine that sharing or reorganization is not feasible for the school district.

a. If either the current or any of the five years of projected enrollments for the school district is fewer than 300 students.

b. If either the current or any of the five years of projected enrollments for the school district for each grade to be served in the building that is the subject of the application is fewer than 30 students.

96.5(5) School budget review committee. The school budget review committee shall review the recommendations from the task force for approval of certificates of need. The

committee shall make recommendations on approval to the department for final consideration.

281—96.6(423E) Award process.

96.6(1) Department determination. The department shall make the final determination on approval of certificates of need.

96.6(2) Notification. The department shall notify applicants no later than two weeks following the date of receipt of the recommendations from the school budget review committee.

281—96.7(423E) Applicant responsibilities.

96.7(1) Change in the project. If a school district significantly changes the proposed project, the school district shall notify the department within ten working days of the change and shall submit a new application for a certificate of need for the newly changed project.

96.7(2) Accounting for the supplemental amount. All revenues from the supplemental school infrastructure amount, and all expenditures from the supplemental school infrastructure amount shall be separately identified and accounted for in a capital projects fund established for the local option sales and services tax for school infrastructure proceeds.

96.7(3) Withdrawal of application. If a school district is granted a certificate of need for a project and the school district elects not to continue with the project, the school district shall notify the department within ten working days following the board action to discontinue the project.

96.7(4) Forfeiture of certificate. Failure to comply with any of the rules in this chapter or provide information that is included in the grant application or that is requested by the department may result in the forfeiture of the certificate of need or removal from the application cycle.

281—96.8(423E) Appeal of certificate denial. Any applicant may appeal the denial of a properly submitted application for certificate of need to the director of the department. Appeals must be in writing and received within ten working days of the date of the notice of the decision to deny. Appeals must be based on a contention that the process was conducted outside of statutory authority; violated state or federal law, policy, or rule; did not provide adequate public notice; was altered without adequate public notice; or involved conflict of interest by staff or committee members. The hearing and appeals procedures found in 281—Chapter 6 that govern the director's decisions shall be applicable to any appeal of denial.

ITEM 3. Amend **281—Chapter 96**, implementation clause, as follows:

These rules are intended to implement Iowa Code chapter ~~422E and 2000 Iowa Acts, Senate file 2447~~ *423E*.

ARC 3988B

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board hereby gives Notice of Intended Action to amend Chapter 6, "Seal and Certificate of Responsibility," Iowa Administrative Code.

These amendments are intended to clarify the requirements for the seal and certification block used to identify all engineering and land surveying documents issued by a licensee for use in Iowa.

Waiver of these rules may be sought pursuant to 193—Chapter 5, "Waivers and Variances from Rules."

Any interested person may make written or oral suggestions or comments on the proposed amendments on or before March 8, 2005. Comments should be directed to Gleean Coates, Executive Officer, Iowa Engineering and Land Surveying Examining Board, 1920 SE Hulsizer Road, Ankeny, Iowa 50021, or by telephoning (515)281-7360.

These amendments are intended to implement Iowa Code sections 542B.13, 542B.15, 542B.20, and 542B.30.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 6.1(2), introductory paragraph, as follows:

6.1(2) Description of seal. The seal shall include*:* the name of the licensee, *the Iowa license number, the word "Iowa"* and the words "Professional Engineer" or "Land Surveyor" or "Professional Engineer and Land Surveyor~~.~~ ," *as appropriate.* ~~The Iowa license number and the word "Iowa" shall be included.~~ *The word "licensed" may be added but is not required on the seal. The word "professional" may be added but is not required on the land surveyor seal. Neither the word "registrant" nor "registered" shall be used on the seal.* The seal shall substantially conform to the samples shown below:

ITEM 2. Amend subrule 6.1(4) as follows:

6.1(4) Each engineering or land surveying document submitted to a client or any public agency, hereinafter referred to as the official copy (or official copies), shall contain an information block on the first page or attached cover sheet for application of a seal by the licensee in responsible charge and an information block for application of a seal by each professional consultant contributing to the submission. In lieu of each contributing professional consultant providing an information block on the front page or attached cover sheet for application of a seal, a table shall be provided that identifies the contributing professionals and where their respective information blocks can be found within the document. The seal

and original signature shall be applied only to a final submission. Each official copy *(or official copies)* of a submission shall be stapled, bound or otherwise attached together so as to clearly establish the complete extent of the submission. Each certification block shall display the seal of the licensee and shall designate the portion of the submission for which that licensee is responsible, so that responsibility for the entire submission is clearly established by the combination of the stated seal responsibilities. Any nonfinal submission of an engineering or land surveying document to a client or public agency shall be clearly labeled "preliminary" or "draft."

The engineering certification *block* shall conform to the wording in the sample shown below:

SEAL	I hereby certify that this engineering document was prepared by me or under my direct personal supervision and that I am a duly licensed Professional Engineer under the laws of the State of Iowa. _____ (signature) (date) Printed or typed name *License number* _____ My license renewal date is December 31, _____. Pages or sheets covered by this seal: _____ _____ _____

The land surveying certification block shall conform to the *wording in the* sample shown below. For maps or acquisition plats prepared from public records or previous measurements by others, the following land surveying certification block may be modified by removing the phrase "and the related survey work was performed."

SEAL	I hereby certify that this land surveying document was prepared and the related survey work was performed by me or under my direct personal supervision and that I am a duly licensed Land Surveyor under the laws of the State of Iowa. _____ (signature) (date) Printed or typed name License number _____ My license renewal date is December 31, _____. Pages or sheets covered by this seal: _____ _____ _____

ARC 4005B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 20, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 22, "Controlling Pollution," and Chapter 31, "Nonattainment Areas," and to adopt a new Chapter 33, "Special Regulations and Construction Permit Requirements for Major Stationary Sources—Nonattainment Areas and Prevention of Significant Deterioration (PSD) of Air Quality," Iowa Administrative Code.

On December 31, 2002, the U.S. Environmental Protection Agency (EPA) promulgated revisions to the Nonattainment New Source Review (NSR) provisions in 40 CFR Part 51.165 and the Prevention of Significant Deterioration (PSD) provisions for attainment area NSR in 40 CFR Part 51.166. Both of these programs are mandated by Parts C and D of Title I of the federal Clean Air Act. EPA states in the preamble to the federal rule making that these revisions are intended to "reduce burden, maximize operating flexibility, improve environmental quality, provide additional certainty, and promote administrative efficiency."

The NSR program contained in Parts C and D of Title I of the Clean Air Act is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under the Clean Air Act. The Department estimates that there are approximately 300 major stationary sources in the state.

Areas that do not meet the National Ambient Air Quality Standards (NAAQS) are referred to as nonattainment areas. In these areas, the nonattainment NSR program applies to new or modified major stationary sources. In areas that meet the NAAQS, referred to as attainment areas, the PSD program applies to new or modified major stationary sources. Collectively, the nonattainment NSR and PSD programs are referred to as the major NSR program.

Five elements of the major NSR program are affected by this rule making. These elements include the procedure for calculating baseline actual emissions, actual-to-projected-actual emissions calculation methodology, plantwide applicability limitations (PALs), emissions units that have been designated as Clean Units, and pollution control projects (PCPs). This rule making also adds a new definition of "regulated NSR pollutant" that clarifies which pollutants are regulated for the purposes of major NSR.

By federal law, the Department must adopt this rule making and submit revisions to its major NSR permitting program to implement these minimum program elements in the Iowa State Implementation Plan (SIP) by no later than January 6, 2006. The SIP contains provisions, such as the preconstruction review program, that are intended to ensure that the NAAQS are achieved and maintained in the state.

On March 30, 2004, the Department convened a technical workgroup, facilitated by the Iowa Department of Economic

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Development, to review the elements of the major NSR program affected by this rule making. The workgroup was tasked with making recommendations to the Department regarding the adoption of the federal rule making into the Iowa Administrative Code. The workgroup was composed of affected stakeholders who have experience with and knowledge of the major NSR program and was supported by permitting staff from the Department. The recommendations of the workgroup and the Department's actions regarding the recommendations are summarized in the "NSR Reform Workgroup Recommendation Summary" document, available from the Department.

The consensus reached by the workgroup was that the text of EPA's major NSR rules should be adopted directly into the Iowa Administrative Code rather than adopted by reference. Adoption of the major NSR rules directly into the Iowa Administrative Code allows the user to access the rules directly in the Iowa Administrative Code instead of referring to the applicable Code of Federal Regulations. This approach also allows the Department to reorganize and consolidate portions of the major NSR rules to make them easier for the regulated public to understand and implement. An additional benefit of this approach is that the major NSR rules become the Department's rules, thereby giving the Department more flexibility in the implementation of rule provisions that could be subject to interpretation. The ability of the Department to have additional flexibility to address issues subject to interpretation on a case-by-case basis was a feature desired by many of the workgroup members.

The workgroup members also recommended nine changes to the federal rules that should be considered during the adoption process. After consideration of the workgroup's recommendations, the Department concurred with five of the nine recommendations. As noted in the "NSR Reform Workgroup Recommendation Summary" document, only one of these recommendations resulted in a change to the text of the EPA's major NSR rules.

One technical workgroup member submitted an individual recommendation for consideration. This recommendation pertained to the exemption from some provisions of the PSD rules for nonprofit health or educational institutions. The PSD rules currently adopted by the Department allow a nonprofit health or nonprofit educational institution to be exempted from the requirements of 40 CFR Part 52.21, paragraphs "j" through "r," if the Governor so requests. The provisions of 40 CFR Part 52.21, paragraphs "j" through "r" include the requirements to conduct a control technology review; a source impact analysis; preconstruction and postconstruction monitoring; analysis of the impairment to visibility, soils and vegetation as a result of the project; and an analysis of the impact on nearby protected federal Class I areas. The individual recommendation was that the Department instead allow exemption from the requirements of 40 CFR Part 52.21, paragraphs "j" through "r," for nonprofit health or nonprofit educational institutions without gubernatorial approval, as provided for in 40 CFR Part 51.166(i). However, the Department has determined that it will continue with its current practice of allowing exemptions from the PSD permitting requirements of paragraphs "j" through "r" of 40 CFR Part 52.21 only upon the request of the Governor, as provided for under 40 CFR Part 52.21(i). Continuing this practice will ensure that possible public health and welfare consequences of proposed changes at a nonprofit health or educational institution are considered before an exemption is granted from the specified PSD permitting requirements.

The Department had previously adopted special requirements for nonattainment areas in rule 567—22.5(455B). Several subrules from rule 567—22.5(455B) have been added to rule 567—33.4(455B) (special construction permit requirements in nonattainment areas). These subrules include additional provisions related to emissions offsets, compliance of existing sources in nonattainment areas with all applicable emissions standards, alternative site analysis, additional conditions for permit approval, and public availability of information. These additional provisions were not addressed in EPA's revisions to 40 CFR 51.165. The Department believes that including these additional provisions in rule 567—33.4(455B) will make rule 33.4 no more or less stringent than the rules in 40 CFR 51.165, will provide additional certainty, and will provide a smoother transition from the existing requirements in rule 567—22.5(455B) to the revised requirements in rule 567—33.4(455B).

Item 1 amends 567—Chapter 20 to refer to 567—Chapter 33 for special requirements for permitting of major stationary sources.

Items 2 and 3 amend rule 567—22.4(455B) to refer to the PSD requirements in 567—Chapter 33 and rescind all subrules of rule 567—22.4(455B). Item 2 will direct Administrative Code users from rule 567—22.4(455B) to 567—Chapter 33 until all references to rule 567—22.4(455B) are identified and changed to 567—Chapter 33 in a subsequent rule making. Once this process has been accomplished, rule 567—22.4(455B) will be rescinded.

Items 4 and 5 amend rule 567—22.5(544B) to refer to the major stationary source nonattainment area permitting requirements in 567—Chapter 33 and rescind all subrules of rule 567—22.5(455B). Item 4 will direct Administrative Code users from rule 567—22.5(455B) to 567—Chapter 33 until all references to rule 567—22.5(455B) are identified and changed to 567—Chapter 33 in a subsequent rule making. Once this process has been accomplished, rule 567—22.5(455B) will be rescinded.

Item 6 rescinds rule 567—22.6(455B). These specifications and instructions for obtaining the list of Iowa's nonattainment area designations will be included in new 567—Chapter 33.

Item 7 amends rule 567—31.1(455B) to refer to 567—Chapter 33 for special construction permit requirements in nonattainment areas.

Item 8 adopts a new 567—Chapter 33. This chapter contains the PSD and nonattainment area special regulations and construction permitting requirements for major stationary sources.

Any person may make written suggestions or comments on the proposed amendments on or before March 25, 2005. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322; fax (515) 242-5094, or by electronic mail to christine.paulson@dnr.state.ia.us.

An informational meeting will be held from 10 a.m. to 12 noon on Thursday, February 17, 2005, in the conference rooms at the Department's Air Quality Bureau Office, 7900 Hickman Road, Urbandale, Iowa. At the informational meeting, Department staff will be available to answer questions on any of the proposed rule revisions.

A public hearing will be held on Friday, March 18, 2005, at 10 a.m. in the conference rooms at the Department's Air Quality Bureau Office, 7900 Hickman Road, Urbandale, Iowa. A second public hearing will be held on Wednesday, March 23, 2005, at 1 p.m. in the Gritter Room of Iowa Hall at

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Kirkwood Community College in Cedar Rapids, Iowa. Comments may be submitted orally or in writing at either of these public hearings. All comments must be received no later than March 25, 2005.

Any person who intends to attend the public hearing and has special requirements such as those related to hearing or mobility impairments should contact Christine Paulson at (515)242-5154 to advise of any specific needs.

These amendments are intended to implement Iowa Code section 455B.133.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **567—20.1(455B,17A)**, second unnumbered paragraph, as follows:

Chapter 21 contains the provisions requiring compliance schedules, allowing for variances, and setting forth the emission reduction program. Chapter 22 contains the standards and procedures for permitting of emission sources ~~and special requirements for nonattainment areas~~. Chapter 23 contains the air emission standards for contaminants. Chapter 24 provides for the reporting of excess emissions and the equipment maintenance and repair requirements. Chapter 25 contains the testing and sampling requirements for new and existing sources. Chapter 26 identifies air pollution emergency episodes and the preplanned abatement strategies. Chapter 27 sets forth the conditions political subdivisions must meet in order to secure acceptance of a local air pollution control program. Chapter 28 identifies the state ambient air quality standards. Chapter 29 sets forth the qualifications for an observer for reading visible emissions. *Chapter 31 contains the conformity of general federal actions to the Iowa state implementation plan or federal implementation plan. Chapter 32 specifies requirements for conducting the animal feeding operations field study. Chapter 33 contains special regulations and construction permit requirements for major stationary sources and includes the prevention of significant deterioration (PSD) and nonattainment area rules.*

ITEM 2. Amend rule 567—22.4(455B), introductory paragraph, as follows:

567—22.4(455B) Special requirements for major stationary sources located in areas designated attainment or unclassified (PSD). ~~Except as provided in subrule 22.4(1), the following federal regulations pertaining to the prevention of significant deterioration are adopted by reference, 40 CFR Subsection 52.21 as amended through March 12, 1996.~~ *The rules for prevention of significant deterioration (PSD) are contained in 567—Chapter 33, rules 33.1(455B) through 33.3(455B) and 33.6(455B) through 33.9(455B).*

ITEM 3. Rescind subrules **22.4(1)** through **22.4(4)**.

ITEM 4. Amend rule 567—22.5(455B), introductory paragraph, as follows:

567—22.5(455B) Special requirements for nonattainment areas. *The rules for major stationary sources located in areas designated as nonattainment are contained in 567—Chapter 33, rules 33.1(455B) and 33.2(455) and 33.4(455B) through 33.9(455B).*

ITEM 5. Rescind subrules **22.5(1)** through **22.5(10)**.

ITEM 6. Rescind rule **567—22.6(455B)**.

ITEM 7. Amend rule 567—31.1(455B) as follows:

567—31.1(455B) Permit requirements relating to nonattainment areas. Special construction permit requirements in nonattainment areas are contained in rules ~~567—22.5(455B) and 22.6(455B)~~ *567—33.1(455B) and 33.2(455B) and 33.4(455B) through 33.9(455B).*

ITEM 8. Adopt a **new** 567—Chapter 33 as follows:

CHAPTER 33
SPECIAL REGULATIONS AND CONSTRUCTION PERMIT REQUIREMENTS FOR MAJOR STATIONARY SOURCES—NONATTAINMENT AREAS AND PREVENTION OF SIGNIFICANT DETERIORATION (PSD) OF AIR QUALITY

567—33.1(455B) Purpose. This chapter implements the major New Source Review (NSR) program contained in Parts C and D of Title I of the federal Clean Air Act, as amended on November 15, 1990, and as promulgated under 40 CFR Part 51.165 and 40 CFR Part 51.166, as amended through July 1, 2004. This is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under Parts C and D of the Clean Air Act, as amended on November 15, 1990. In areas that do not meet the National Ambient Air Quality Standards (NAAQS), the nonattainment NSR program applies. In areas that meet the NAAQS, the PSD program applies. Collectively, the nonattainment NSR and PSD programs are referred to as the major NSR program.

Many of the requirements for the PSD and nonattainment NSR programs, including the definitions, are identical or similar. However, there are also definitions and requirements unique to each program.

Rule 567—33.2(455B) contains the definitions that are applicable to both PSD and nonattainment NSR programs.

Rule 567—33.3(455B) sets forth the definitions, standards and permitting requirements that are specific to the PSD program.

Rule 567—33.4(455B) contains the definitions, standards and permitting requirements that are specific to the nonattainment NSR program.

Rule 567—33.5(455B) specifies how to obtain a list of Iowa's nonattainment area designations.

Rules 567—33.6(455B) and 567—33.7(455B) contain the conditions for classifying an emissions unit as a clean unit for both PSD and nonattainment NSR programs.

Rule 567—33.8(455B) sets forth the requirements for using the pollution control project (PCP) exclusion for both PSD and nonattainment NSR programs.

Rule 567—33.9(455B) includes the conditions under which a source subject to either PSD or to the nonattainment NSR program may obtain a plantwide applicability limitation (PAL) on emissions.

In addition to the requirements in this chapter, stationary sources may also be subject to the permitting requirements in 567—Chapter 22, including requirements for Title V operating permits.

567—33.2(455B) Definitions. Unless otherwise noted, the definitions in this rule shall apply to major new source review (NSR) rules and programs for both PSD and nonattainment areas. Additional definitions that are specific to these and other programs in this chapter are contained under the appli-

cable rules. For the purposes of this chapter, the following terms shall have the meaning indicated in this rule.

"Act" means the Clean Air Act, 42 U.S.C. Sections 7401, et seq., as amended on November 15, 1990.

"Actual emissions" means:

1. The actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with "2" through "4," except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under rule 567—33.9(455B). Instead, the requirements specified under the definitions for "projected actual emissions" and "baseline actual emissions" of this rule shall apply for those purposes.

2. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

3. The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

4. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Administrator" means the administrator for the United States Environmental Protection Agency (EPA) or designee.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits or enforceable permit conditions which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

1. The applicable standards as set forth in 567—subrules 23.1(2) through 23.1(5) (new source performance standards, emissions standards for hazardous air pollutants, and federal emissions guidelines);

2. The applicable state implementation plan (SIP) emissions limitation, including those with a future compliance date; or

3. The emissions rate specified as an enforceable permit condition.

"Baseline actual emissions," for the purposes of this chapter, means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs "1" through "4."

1. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five-year period immediately preceding the date on which the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph "1"(b) of this definition.

2. For an existing emissions unit, other than an electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the ten-year period immediately preceding either the date on which the owner or operator begins actual construction of the project, or the date on which a complete permit application is received by the department for a permit required either under this chapter or under a SIP approved by the Administrator, whichever is earlier, except that the ten-year period shall not include any period earlier than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emissions limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emissions limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of paragraph 33.4(3)"h."

(d) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs "2"(b) and (c) of this definition.

3. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

4. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph "1"; for other existing emissions units in accordance with the procedures contained in paragraph "2"; and for a new emissions unit in accordance with the procedures contained in paragraph "3."

"Baseline area" means:

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1. Any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(D) or (E) of the Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 $\mu g/m^3$ (annual average) of the pollutant for which the minor source baseline date is established.

2. Area redesignations under Section 107(d)(1)(D) or (E) of the Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which establishes a minor source baseline date or is subject to regulations specified in rule 567—33.3(455D) (PSD requirements).

3. Any baseline area established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the permit authority rescinds the corresponding minor source baseline date in accordance with the definition specified in this rule.

"Baseline concentration" means:

1. The ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(a) The actual emissions, as defined in this rule, representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph "2" of this definition;

(b) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

2. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) Actual emissions, as defined in this rule, from any major stationary source on which construction commenced after the major source baseline date; and

(b) Actual emissions increases and decreases, as defined in this rule, at any stationary source occurring after the minor source baseline date.

"Baseline date" shall include:

1. Both "major source baseline date" and "minor source baseline date," as follows:

(a) The "major source baseline date" means, in the case of particulate matter and sulfur dioxide, January 6, 1975, and in the case of nitrogen dioxide, February 8, 1988.

(b) The "minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21, as amended through July 1, 2004, or 567—33.3(455B) (PSD requirements) submits a complete application under the relevant regulations. The trigger date for particulate matter and sulfur dioxide is August 7, 1977. For nitrogen dioxide, the trigger date is February 8, 1988.

2. The "baseline date" is established for each pollutant for which increments or other equivalent measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d)(i)(D) or (E) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21, as amended through July 1, 2004, or under regulations specified under 567—33.3(455B) (PSD requirements); and

(b) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or in the case of a major modification, there would be a significant net emissions increase of the pollutant.

Any minor source baseline date established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that the reviewing authority may rescind any such minor source baseline date where it can be shown, to the satisfaction of the reviewing authority, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

"Best available control technology" or "BACT" means an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the reviewing authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 567—subrules 23.1(2) through 23.1(5) (federal standards for new stationary sources, federal standards for hazardous air pollutants, and federal emissions guidelines). If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or

postcombustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy—Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"Clean unit" means any emissions unit that has been issued a major NSR permit that requires compliance with BACT or LAER, is complying with such BACT/LAER requirements, and qualifies as a clean unit pursuant to regulations approved by the Administrator in accordance with the requirements under rule 567—33.6(455B); or any emissions unit that has been designated by the department as a clean unit, based on the criteria in rule 567—33.7(455B), using a SIP-approved permitting process.

"Commence," as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

1. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

2. Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Complete" means, in reference to an application for a permit, that the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the reviewing authority from requesting or accepting any additional information.

"Construction" means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, that would result in a change in emissions.

"Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of this chapter, to sample, to condition (if applicable), to analyze, and to provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of this chapter, to monitor the process device operational parameters and the control device operational parameters (e.g., control device secondary voltages and electric currents) and other information (e.g., gas flow rate, O^2 or CO^2 concentrations), and to record average operational parameter value(s) on a continuous basis.

"CFR" means the Code of Federal Regulations, with standard references in this chapter by Title and Part, so that "40 CFR 51" means "Title 40 Code of Federal Regulations, Part 51."

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in this rule. For purposes of this chapter, there are two types of emissions units:

1. A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated.

2. An existing emissions unit is any emissions unit that does not meet the requirements in "1" above. A replacement unit, as defined in this rule, is an existing emissions unit.

"Enforceable permit condition," for the purpose for this chapter, means any of the following limitations and conditions: requirements development pursuant to new source performance standards, prevention of significant deterioration standards, emissions standards for hazardous air pollutants, requirements within the SIP, and any permit requirements established pursuant to this chapter, any permit requirements established pursuant to 40 CFR 52.21 or Part 51, Subpart I, as amended through July 1, 2004, or under conditional, construction or Title V operating permit rules.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions which are enforceable by the Administrator or the department, including those requirements developed pursuant to 40 CFR Parts 60, 61 and 63, as amended through November 29, 2004; requirements within 567—subrules 23.1(2) through 23.1(5); requirements within Iowa's SIP; any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, as amended through July 1, 2004, including operating permits issued under an EPA-approved program, that are incorporated into Iowa's SIP and expressly require adherence to any permit issued under such program.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

"Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

"Indian reservation" means any federally recognized reservation established by treaty, agreement, executive order, or Act of Congress.

"Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

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"Lowest achievable emissions rate" or "LAER" means, for any source, the more stringent rate of emissions based on the following:

1. The most stringent emissions limitation which is contained in the SIP for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

2. The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

"Low terrain" means any area other than high terrain.

"Major source baseline date" is defined under the definition of "baseline date" in this rule.

"Minor source baseline date" is defined under the definition of "baseline date" in this rule.

"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control law and regulations and those air quality control laws and regulations which are part of Iowa's SIP.

"Nonattainment area" means an area so designated by the Administrator, acting pursuant to Section 107 of the Act.

"Nonattainment major new source review (NSR) program" means a major source preconstruction permit program that has been approved by the Administrator and is incorporated into Iowa's SIP to implement the requirements of 40 CFR 51.165, as amended through July 1, 2004, or a program that implements 40 CFR 51, Appendix S, Sections I through VI, as amended through February 3, 1992. Any permit issued under such a program is a major NSR permit.

"Permitting authority" means the Iowa department of natural resources or the director thereof.

"Pollution control project" or "PCP" means any activity, set of work practices or project, including "pollution prevention" as defined in this rule, undertaken at an existing emissions unit that reduces emissions of air pollutants from such unit. Such qualifying activities or projects can include the replacement or upgrade of an existing emissions control technology with a more effective unit. Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. Projects listed in paragraphs "1" through "6" of this definition are presumed to be environmentally beneficial pursuant to rule 567—33.8(455B), "pollution control project (PCP) exclusion procedural requirements." Projects not listed in paragraphs "1"through "6" may qualify for a case-specific PCP exclusion pursuant to the requirements of rule 567—33.8(455B).

1. Conventional or advanced flue gas desulfurization or sorbent injection for control of SO_2.

2. Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for control of particulate matter or other pollutants.

3. Flue gas recirculation, low-NO_x burners or combustors, selective non-catalytic reduction, selective catalytic reduction, low emissions combustion (for IC engines), and oxidation/absorption catalyst for control of NO_x.

4. Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of volatile organic compounds or hazardous air pollutants. For the purpose of this chapter, "hydrocarbon combustion flare" means either a flare used to comply with an applicable NSPS or MACT standard (including uses of flares during startup, shutdown, or malfunction permitted under such a standard), or a flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 mg/dscm hydrogen sulfide.

5. Activities or projects undertaken to accommodate switching (or partially switching) to an inherently less polluting fuel, to be limited to the following fuel switches:

(a) Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to 0.05 percent sulfur diesel (i.e., from a higher sulfur content #2 fuel or from #6 fuel, to CA 0.05 percent sulfur #2 diesel);

(b) Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal;

(c) Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of "unclean" wood;

(d) Switching from coal to #2 fuel oil (0.5 percent maximum sulfur content); and

(e) Switching from high sulfur coal to low sulfur coal (maximum 1.2 percent sulfur content).

6. Activities or projects undertaken to accommodate switching from the use of one ozone depleting substance (ODS) to the use of a substance with a lower or zero ozone depletion potential (ODP), including changes to equipment needed to accommodate the activity or project, that meet the following requirements:

(a) The productive capacity of the equipment is not increased as a result of the activity or project.

(b) The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS. To make this determination, follow the procedures listed below:

- Determine the ODP of the substances by consulting 40 CFR Part 82, Subpart A, Appendices A and B.
- Calculate the replaced ODP-weighted amount by multiplying the baseline actual usage (using the annualized average of any 24 consecutive months of usage within the past ten years) by the ODP of the replaced ODS.
- Calculate the projected ODP-weighted amount by multiplying the projected annual usage of the new substance by its ODP.

If the value calculated above for the replaced ODP-weighted amount is more than the value calculated above for the projected ODP-weighted amount, then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.

"Pollution prevention" means any activity that, through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recy−cling, treatment, or disposal; "pollution prevention" does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the

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limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor the process device operational parameters and the control device operational parameters (e.g., control device secondary voltages and electric currents) and other information (e.g., gas flow rate, O^2 or CO^2 concentrations), and calculate and record the mass emissions rate (e.g., lb/hr) on a continuous basis.

"Prevention of significant deterioration (PSD) permit" means any permit that is issued under a major source preconstruction permit program that has been approved by the Administrator and incorporated into Iowa's SIP.

"Prevention of significant deterioration (PSD) program" means a major source preconstruction permit program that has been approved by the Administrator and incorporated into Iowa's SIP. Any permit issued under such a program is a major NSR permit.

"Project" means a physical change in, or change in method of operation of, an existing major stationary source.

"Projected actual emissions," for the purposes of this chapter, means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) beginning on the first day of the month following the date when the unit commences or resumes operation after the project, or in any one of the ten years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source.

In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

1. Shall consider all relevant information including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

2. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

3. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the "baseline actual emissions" as defined in rule 567—33.2(455B), and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

4. In lieu of using the method set out in paragraphs "1" through "3," may elect to use the emissions unit's potential to emit, in tons per year, as defined under rule 567—33.2(455B).

"Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

1. Has not been in operation for the two-year period prior to the enactment of the Act, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;

2. Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

3. Is equipped with low-NO_X burners prior to the time of commencement of operations following reactivation; and

4. Is otherwise in compliance with the requirements of the Act.

"Replacement unit" means an emissions unit for which all the criteria listed in paragraphs "1" through "3" of this definition are met. No creditable emissions reductions shall be generated from shutting down the existing emissions unit that is replaced.

1. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), as amended through December 16, 1975, or the emissions unit completely takes the place of an existing emissions unit.

2. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

3. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

"Repowering" means:

1. Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion; integrated gasification combined cycle; magnetohydrodynamics; direct and indirect coal-fired turbines; integrated gasification fuel cells; or, as determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of these technologies; and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

2. Repowering shall also include any oil or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

3. The department shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under Section 409 of the Act.

"Reviewing authority" means the department, or the Administrator in the case of EPA-implemented permit programs under 40 CFR 52.21.

"Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purposes of this chapter, "secondary emissions" must be specific, well-defined, and quantifiable, and impact the same general areas as the stationary source modification which causes the secondary emissions. "Secondary emissions" includes emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. "Secondary emissions" does not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

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"State implementation plan" or "SIP" means the plan adopted by the state of Iowa and approved by the Administrator which provides for implementation, maintenance, and enforcement of such primary and secondary ambient air quality standards as they are adopted by the Administrator, pursuant to the Act.

"Stationary source" means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less and that complies with the SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated.

"Title V permit" means an operating permit under Title V of the Act.

"Volatile organic compounds (VOC)" means any compound included in the definition of volatile organic compound found at 50 CFR Section 51.100(s), as amended through November 29, 2004.

567—33.3(455B) Special construction permit requirements for major stationary sources in areas designated attainment or unclassified (PSD).

33.3(1) Definitions. Definitions included in this subrule apply to only rule 567—33.3(455B) (PSD program requirements). Additional definitions applicable to rule 567—33.3(455B) are contained in rules 567—33.2(455B) and 567—33.9(455B). For purposes of rule 567—33.3(455B), the following terms shall have the meaning indicated in this subrule:

a.(1) "Major stationary source" means:

1. Any one of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any "regulated NSR pollutant," as defined in rule 567—33.3(455B):

- Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- Coal cleaning plants (with thermal dryers);
- Kraft pulp mills;
- Portland cement plants;
- Primary zinc smelters;
- Iron and steel mill plants;
- Primary aluminum ore reduction plants;
- Primary copper smelters;
- Municipal incinerators capable of charging more than 250 tons of refuse per day;
- Hydrofluoric, sulfuric, and nitric acid plants;
- Petroleum refineries;
- Lime plants;
- Phosphate rock processing plants;
- Coke oven batteries;
- Sulfur recovery plants;
- Carbon black plants (furnace process);
- Primary lead smelters;
- Fuel conversion plants;
- Sintering plants;
- Secondary metal production plants;
- Chemical process plants;
- Fossil-fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;
- Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- Taconite ore processing plants;
- Glass fiber processing plants; and
- Charcoal production plants.

2. Notwithstanding the stationary source size specified in "1," any stationary source which emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant, as defined in rule 567—33.3(455B); or

3. Any physical change that would occur at a stationary source not otherwise qualifying under this subparagraph as a major stationary source if the change would constitute a major stationary source by itself.

(2) A major source that is major for volatile organic compounds shall be considered major for ozone.

(3) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this rule whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in subparagraph 33.3(1)"a"(1) or to any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

b. "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source. All terms used in subrule 33.3(1) shall have the meanings indicated in rule 567—33.3(455B).

(1) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

(2) A physical change or change in the method of operation shall not include:

1. Use of an alternative fuel or raw material by reason of any order under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

2. Use of an alternative fuel by reason of an order or rule under Section 125 of the Act;

3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

4. Use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition, or that the source is approved to use under any federally enforceable permit condition;

5. An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975;

6. Any change in ownership at a stationary source;

7. The addition, replacement, or use of a "PCP," as defined in rule 567—33.2(455B), at an existing emissions unit meeting the requirements of rule 567—33.8(455B). A replacement control technology must provide more effective emissions control than that of the replaced control technology to qualify for this exclusion;

8. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the requirements within the SIP; and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated;

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9. The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis;

10. The reactivation of a very clean coal-fired electric utility steam generating unit.

(3) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under rule 567—33.9(455B) for a PAL for that pollutant. Instead, the definition under rule 567—33.9(455B) shall apply.

c.(1) "Net emissions increase" means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the following exceeds zero:

- The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated according to the applicability requirements under subrule 33.3(2); and
- Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under paragraph 33.3(1)"c" shall be determined as provided for in rule 567—33.2(455B) under the definition of "baseline actual emissions," except that paragraphs "1"(c) and "2"(d) of that definition shall not apply.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if the increase or decrease in actual emissions occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if:

- The increase or decrease in actual emissions occurs within the contemporaneous time period, as noted in subparagraph 33.3(1)"c"(2);
- The department has not relied on the increase or decrease in actual emissions in issuing a permit for the source under this rule, which permit is in effect when the increase in actual emissions from the particular change occurs; and
- The increase or decrease in actual emissions did not occur at a clean unit, except as provided in subrules 33.6(8) and 33.7(10) for "netting at clean units."

(4) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if the increase or decrease in actual emissions is required to be considered in calculating the amount of maximum allowable increases remaining available.

(5) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(6) A decrease in actual emissions is creditable only to the extent that:

- The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
- The decrease in actual emissions is enforceable as a practical matter at and after the time that actual construction on the particular change begins;
- The decrease in actual emissions has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and
- The decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a clean unit under rule 567—33.7(455B). That is, once an emissions unit has been designated as a clean unit, the owner or operator cannot later use the emissions reduction from the air pollution control measures on which the clean unit designation is based in calculating the net emissions increase for another emissions unit, i.e., must not use that reduction in a "netting analysis" for another emissions unit. However, any new emissions reductions that were not relied upon in a PCP excluded pursuant to rule 567—33.8(455B) or for the clean unit designation are creditable to the extent they meet the requirements in paragraph 33.8(6)"d" for "generation of emissions reduction credits" for the PCP and subrules 33.6(8) and 33.7(10) for "netting at clean units" for a clean unit.

(7) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(8) The definition of "actual emissions," numbered paragraph "2," as specified in rule 567—33.2(455B), shall not apply for determining creditable increases and decreases.

d. "Regulated NSR pollutant" means the following:

(1) Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator (e.g., volatile organic compounds are precursors for ozone);

(2) Any pollutant that is subject to any standard promulgated under Section 111 of the Act;

(3) Any Class I or Class II substance subject to a standard promulgated under or established by Title VI of the Act; or

(4) Any pollutant that otherwise is subject to regulation under the Act; except that any or all hazardous air pollutants either listed in Section 112 of the Act or added to the list pursuant to Section 112(b)(2) of the Act, which have not been delisted pursuant to Section 112(b)(3) of the Act, are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Act.

e. "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

- Carbon monoxide: 100 tons per year (tpy)
- Nitrogen oxides: 40 tpy
- Sulfur dioxide: 40 tpy
- Particulate matter: 25 tpy of particulate matter emissions or 15 tpy of PM_{10} emissions
- Ozone: 40 tpy of volatile organic compounds
- Lead: 0.6 tpy
- Fluorides: 3 tpy
- Sulfuric acid mist: 7 tpy
- Hydrogen sulfide (H_2S): 10 tpy
- Total reduced sulfur (including H_2S): 10 tpy
- Reduced sulfur compounds (including H_2S): 10 tpy
- Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2×10^{-6} megagrams per year (3.5×10^{-6} tons per year)

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- Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year)
- Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)
- Municipal solid waste landfill emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year)

(2) "Significant" means, for purposes of this rule and in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that subparagraph 33.3(1)"e"(1) does not list, any emissions rate.

(3) Notwithstanding subparagraph (1), "significant," for purposes of this rule, means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten kilometers of a Class I area, and have an impact on such area equal to or greater than 1 $\mu g/m^3$ (24-hour average).

f. "Significant emissions increase" means, for a "regulated NSR pollutant," as defined in paragraph 33.3(1)"d," an increase in emissions that is "significant," as defined in paragraph 33.3(1)"e," for that pollutant.

33.3(2) Applicability. The requirements of rule 567—33.3(455B) apply to the construction of any new "major stationary source," as defined in paragraph 33.3(1)"a," or any project at an existing major stationary source in an area designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Act.

a. The requirements of subrules 33.3(10) through 33.3(18) apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this rule otherwise provides.

b. No new major stationary source or major modification to which the requirements of subrule 33.3(10) through paragraph 33.3(18)"e" apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

c. Except as otherwise provided in paragraphs 33.3(2)"i" and "j," and consistent with the definition of "major modification" contained in paragraph 33.3(1)"b," a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a "significant emissions increase," as defined in paragraph 33.3(1)"f"; and a "net emissions increase," as defined in paragraph 33.3(1)"c," which is "significant," as defined in paragraph 33.3(1)"e." The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

d. The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs 33.3(2)"e" through "h." The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition of "net emissions increase" in paragraph 33.3(1)"c." Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

e. Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the "projected actual emissions," as defined in rule 567—33.2(455B), and the "baseline actual emissions," as defined in rule 567—33.2(455B), for each existing emissions unit, equals or exceeds the significant amount for that pollutant, as found in paragraph 33.3(1)"e."

f. Actual-to-potential test for projects that involve only construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the "potential to emit," as defined in rule 567—33.2(455B), from each new emissions unit following completion of the project and the "baseline actual emissions" for a new emissions unit, as defined in rule 567—33.2(455B), before the project equals or exceeds the significant amount for that pollutant, found in paragraph 33.3(1)"e."

g. Emissions test for projects that involve clean units. For a project that will be constructed and operated at a clean unit without causing the emissions unit to lose its clean unit designation, no emissions increase is deemed to occur.

h. Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs 33.3(2)"e" through "g" as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant, as found in paragraph 33.3(1)"e." For example, if a project involves both an existing emissions unit and a clean unit, the projected increase is determined by summing the values determined using the method specified in paragraph 33.3(2)"e" for the existing unit and determined using the method specified in paragraph 33.3(2)"g" for the clean unit.

i. For any major stationary source with a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under rule 567—33.9(455B).

j. An owner or operator undertaking a "PCP," as defined in rule 567—33.2(455B), shall comply with the requirements under rule 567—33.8(455B).

33.3(3) Ambient air increments. In areas designated as Class I, Class II, or Class III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

Pollutant	Maximum Allowable Increase (micrograms per cubic meter)
Class I	
Particulate matter:	
PM_{10}, annual arithmetic mean	4
PM_{10}, 24-hr maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2
24-hr maximum	5
3-hr maximum	25
Nitrogen dioxide: Annual arithmetic mean	2.5
Class II	
Particulate matter:	
PM_{10}, annual arithmetic mean	17
PM_{10}, 24-hr maximum	30

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Pollutant	Maximum Allowable Increase (micrograms per cubic meter)
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25
Class III	
Particulate matter:	
PM_{10}, annual arithmetic mean	34
PM_{10}, 24-hr maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40
24-hr maximum	182
3-hr maximum	700
Nitrogen dioxide: Annual arithmetic mean	50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

33.3(4) Ambient air ceilings. No concentration of a pollutant shall exceed:

a. The concentration permitted under the national secondary ambient air quality standard, or

b. The concentration permitted under the national primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

33.3(5) Restrictions on area classifications.

a. All of the following areas which were in existence on August 7, 1977, shall be Class I areas and may not be redesignated:

(1) International parks;

(2) National wilderness areas which exceed 5,000 acres in size;

(3) National memorial parks which exceed 5,000 acres in size; and

(4) National parks which exceed 6,000 acres in size.

b. Areas which were redesignated as Class I under regulations promulgated before August 7, 1977, shall remain Class I, but may be redesignated as provided in this rule.

c. Any other area, unless otherwise specified in the legislation creating such an area, is initially designated Class II, but may be redesignated as provided in this rule.

d. The following areas may be redesignated only as Class I or Class II:

(1) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(2) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

33.3(6) Exclusions from increment consumption.

a. The following concentrations shall be excluded in determining compliance with a maximum allowable increase:

(1) Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 over the emissions from such sources before the effective date of such an order;

(2) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;

(3) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(4) The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

(5) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources which are affected by SIP revisions approved by the Administrator as meeting the criteria specified in paragraph 33.3(6)"d."

b. No exclusion of such concentrations specified in subparagraphs 33.3(6)"a"(1) and (2) shall apply more than five years after the effective date of the order to which subparagraph (1) refers, or the plan to which subparagraph (2) refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

c. Reserved.

d. For purposes of excluding concentrations pursuant to subparagraph 33.3(6)"a"(5), the Administrator may approve a SIP revision that;

(1) Specifies the time over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur. Such time is not to exceed two years in duration unless a longer time is approved by the Administrator;

(2) Specifies that the time period for excluding certain contributions in accordance with subparagraph 33.3(6)"d"(1) is not renewable;

(3) Allows no emissions increase from a stationary source which would impact a Class I area or an area where an applicable increment is known to be violated; or cause or contribute to the violation of a national ambient air quality standard;

(4) Requires limitations to be in effect at the end of the time period specified in accordance with subparagraph 33.3(6)"d"(1), which would ensure that the emissions levels from stationary sources affected by the SIP revision would not exceed those levels occurring from such sources before the SIP revision was approved.

33.3(7) Redesignation.

a. All areas of the state, except as otherwise provided under subrule 33.3(5), shall be designated either Class I, Class II, or Class III. Any designation other than Class II shall be subject to the redesignation procedures of this subrule. Redesignation, except as otherwise precluded by subrule 33.3(5), may be proposed by the respective states or Indian governing bodies, as provided in this subrule, subject to approval by the Administrator as a revision to the applicable SIP.

b. The state may submit to the Administrator a proposal to redesignate areas of the state Class I or Class II provided that:

(1) At least one public hearing has been held in accordance with procedures established in 40 CFR §51.102, as amended through February 22, 2000;

(2) Other states, Indian governing bodies, and federal land managers whose lands may be affected by the proposed redesignation were notified at least 30 days prior to the public hearing;

(3) A discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation, was prepared and made available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing contained appropriate notification of the availability of such discussion;

(4) Prior to the issuance of notice respecting the redesignation of an area that includes any federal lands, the state has provided written notice to the appropriate federal land manager and afforded adequate opportunity, not in excess of 60 days, to confer with the state respecting the redesignation and to submit written comments and recommendations. In redesignating any area with respect to which any federal land manager had submitted written comments and recommendations, the state shall have published a list of any inconsistency between such redesignation and such comments and recommendations, together with the reasons for making such redesignation against the recommendation of the federal land manager; and

(5) The state has proposed the redesignation after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.

c. Any area other than an area to which subrule 33.3(5) refers may be redesignated as Class III if:

(1) The redesignation would meet the requirements of provisions established in accordance with paragraph 33.3(7)"b";

(2) The redesignation, except any established by an Indian governing body, has been specifically approved by the governor of the state, after consultation with the appropriate committees of the legislature, if it is in session, or with the leadership of the legislature, if it is not in session (unless state law provides that such redesignation must be specifically approved by state legislation) and if general purpose units of local government representing a majority of the residents of the area to be redesignated enact legislation (including resolutions where appropriate) concurring in the redesignation;

(3) The redesignation would not cause, or contribute to, a concentration of any air pollutant which would exceed any maximum allowable increase permitted under the classification of any other area or any national ambient air quality standard; and

(4) Any permit application for any major stationary source or major modification subject to provisions established in accordance with subrule 33.3(17) which could receive a permit only if the area in question were redesignated as Class III, and any material submitted as part of that application, were available, insofar as was practicable, for public inspection prior to any public hearing on redesignation of any area as Class III.

d. Lands within the exterior boundaries of Indian reservations may be redesignated only by the appropriate Indian governing body. The appropriate Indian governing body may submit to the Administrator a proposal to redesignate areas Class I, Class II, or Class III provided that:

(1) The Indian governing body has followed procedures equivalent to those required of a state under paragraphs 33.3(7)"b" and "c"; and

(2) Such redesignation is proposed after consultation with the state(s) in which the Indian reservation is located and which border the Indian reservation.

e. The Administrator shall disapprove, within 90 days of submission, a proposed redesignation of any area only if the Administrator finds, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of subrule 33.3(7) or is inconsistent with subrule 33.3(5). If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation which was disapproved.

f. If the Administrator disapproves any proposed area designation, the state or Indian governing body, as appropriate, may resubmit the proposal after correcting the deficiencies noted by the Administrator.

33.3(8) Stack heights. The degree of emissions limitation required for control of any air pollutant under the plan shall not be affected in any manner by:

a. So much of a stack height, not in existence before December 31, 1970, as exceeds good engineering practice; or

b. Any other dispersion technique not implemented before December 31, 1970.

33.3(9) Exemptions.

a. The requirements of subrules 33.3(10) through 33.3(18) shall not apply to a particular major stationary source or major modification, if:

(1) Construction commenced on the source or modification before August 7, 1977. The regulations at 40 CFR 52.21 as in effect before August 7, 1977, shall govern the review and permitting of any such source or modification; or

(2) The source or modification was subject to the review requirements of 40 CFR 52.21(d)(1) as in effect before March 1, 1978, and the owner or operator:

1. Obtained under 40 CFR 52.21 a final approval effective before March 1, 1978;

2. Commenced construction before March 19, 1979; and

3. Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

(3) The source or modification was subject to 40 CFR 52.21 as in effect before March 1, 1978, and the review of an application for approval for the stationary source or modification under 40 CFR 52.21 would have been completed by March 1, 1978, but for an extension of the public comment period pursuant to a request for such an extension. In such a case, the application shall continue to be processed, and granted or denied, under 40 CFR 52.21 as in effect prior to March 1, 1978; or

(4) The source or modification was not subject to 40 CFR 52.21 as in effect before March 1, 1978, and the owner or operator:

1. Obtained all final federal, state and local preconstruction approvals or permits necessary under the applicable SIP before March 1, 1978;

2. Commenced construction before March 19, 1979; and

3. Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

(5) The source or modification was not subject to 40 CFR 52.21 as in effect on June 19, 1978, or under the partial stay of regulations published on February 5, 1980 (45 FR 7800), and the owner or operator:

1. Obtained all final federal, state and local preconstruction approvals or permits necessary under the applicable SIP before August 7, 1980;

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2. Commenced construction within 18 months from August 7, 1980, or any earlier time required under the applicable SIP; and

3. Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

(6) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the governor requests that it be exempt from those requirements; or

(7) The source is a portable stationary source which has previously received a permit under this rule; and

1. The owner or operator proposes to relocate the source and emissions of the source and the new location would be temporary; and

2. The emissions from the source would not exceed its allowable emissions; and

3. The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

4. Reasonable notice is given to the department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the department not less than ten days in advance of the proposed relocation unless a different time duration is previously approved by the department; or

(8) The source or modification was not subject to 40 CFR 52.21 or a SIP-approved PSD program, with respect to particulate matter, as in effect before July 31, 1987, and the owner or operator:

1. Obtained all final federal, state, and local preconstruction approvals or permits necessary under the applicable SIP before July 31, 1987; and

2. Commenced construction within 18 months after July 31, 1987, or any earlier time required under the SIP; and

3. Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable period of time; or

(9) The source or modification was subject to 40 CFR 52.21 or a SIP-approved PSD program, with respect to particulate matter, as in effect before July 31, 1987, and the owner or operator submitted an application for a PSD permit before that date, and the department or the Administrator subsequently determined that the application as submitted was complete with respect to the particular matter requirements then in effect. Instead, the requirements of subrules 33.3(10) through 33.3(18) that were in effect before July 31, 1987, shall apply to such source or modification.

b. The requirements of subrules 33.3(10) through 33.3(18) shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under Section 107 of the Act.

c. The requirements of subrules 33.3(11), 33.3(13) and 33.3(15) shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

(1) Would impact no Class I area and no area where an applicable increment is known to be violated; and

(2) Would be temporary.

d. The requirements of subrules 33.3(11), 33.3(13) and 33.3(15) as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of best available control technology would be less than 50 tons per year.

e. The department may exempt a stationary source or modification from the requirements of subrule 33.3(13), with respect to monitoring for a particular pollutant, if:

(1) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

- Carbon monoxide—575 $\mu g/m^3$, 8-hour average;
- Nitrogen dioxide—14 $\mu g/m^3$, annual average;
- Particulate matter—10 $\mu g/m^3$ of PM_{10}, 24-hour average;
- Sulfur dioxide—13 $\mu g/m^3$, 24-hour average;
- Ozone*;
- Lead—0.1 $\mu g/m^3$, 3-month average;
- Fluorides—0.25 $\mu g/m^3$, 24-hour average;
- Total reduced sulfur—10 $\mu g/m^3$, 1-hour average;
- Hydrogen sulfide—0.2 $\mu g/m^3$, 1-hour average;
- Reduced sulfur compounds—10 $\mu g/m^3$, 1-hour average; or

*No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to PSD would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

(2) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in subparagraph 33.3(9)"e"(1), or the pollutant is not listed in subparagraph 33.3(9)"e"(1).

f. The requirements for BACT in subrule 33.3(10) and the requirements for air quality analyses in paragraph 33.3(13)"a" shall not apply to a particular stationary source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submitted an application for a permit under those regulations before August 7, 1980, and the Administrator subsequently determines that the application as submitted before that date was complete. Instead, the requirements at 40 CFR 52.21(j) and (n) as in effect on June 19, 1978, apply to any such source or modification.

g.(1) The requirements for air quality monitoring in subparagraphs 33.3(13)"a"(2) through (4) shall not apply to a particular source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submitted an application for a PSD permit to the Administrator on or before June 8, 1981, and the Administrator subsequently determined that the application as submitted before that date was complete with respect to the requirements other than those in subparagraphs 33.3(13)"a"(2) through (4), and with respect to the requirements for such analyses at 40 CFR 52.21(m)(2) as in effect on June 19, 1978. Instead, the latter requirements shall apply to any such source or modification.

(2) The requirements for air quality monitoring in subparagraphs 33.3(13)"a"(2) through (4) shall not apply to a particular source or modification that was not subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submitted an application for a PSD permit to the Administrator on or before June 8, 1981, and the Administrator subsequently determined that the application as submitted before that date was complete,

except with respect to the requirements in subparagraphs 33.3(13)"a"(2) through (4).

h.(1) At the discretion of the department, the requirements for air quality monitoring of PM_{10} in subparagraphs 33.3(13)"a"(1) through (4) may not apply to a particular source or modification when the owner or operator of the source or modification submitted an application for a PSD permit to the Administrator on or before June 1, 1988, and the department or Administrator subsequently determined that the application as submitted before that date was complete, except with respect to the requirements for monitoring particulate matter in subparagraphs 33.3(13)"a"(1) through (4).

(2) The requirements for air quality monitoring of PM_{10} in subparagraphs 33.3(13)"a"(2) and (4) and paragraph 33.3(13)"c" shall apply to a particular source or modification if the owner or operator of the source or modification submitted an application for a PSD permit to the department after June 1, 1988, and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988, to the date the application becomes otherwise complete in accordance with the provisions set forth under subparagraph 33.3(13)"a"(8), except that if the department or the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months), the data that subparagraph 33.3(13)"a"(3) requires shall have been gathered over a shorter period.

i. The requirements of paragraph 33.3(11)"b" shall not apply to a stationary source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted an application for a permit under this rule before the provisions embodying the maximum allowable increase took effect as part of the applicable SIP and the department or the Administrator subsequently determined that the application as submitted before that date was complete.

j. The requirements in paragraph 33.3(11)"b" shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM_{10} if:

(1) The owner or operator of the source or modification submitted an application for a permit under rule 567—33.3(455B) before the provisions embodying the maximum allowable increases for PM_{10} took effect in a SIP to which this rules applies; and

(2) The department or the Administrator subsequently determined that the application as submitted before the date specified in subparagraph 33.3(9)"j"(1) was otherwise complete. Instead, the requirements in paragraph 33.3(11)"b" shall apply with respect to the maximum allowable increases for total suspended particulate as in effect on the date the application was submitted.

33.3(10) Control technology review.

a. A major stationary source or major modification shall meet each applicable emissions limitation under the SIP, each applicable federal emissions standard, and each standard of performance under subrules 23.1(2) through 23.1(5).

b. A new major stationary source shall apply BACT for each regulated NSR pollutant that it would have the potential to emit in significant amounts.

c. A major modification shall apply BACT for each regulated NSR pollutant for which it would be a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

d. For phased construction projects, the determination of BACT shall be reviewed and modified as appropriate at the least reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of BACT for the source.

33.3(11) Source impact analysis. The owner or operator of the proposed source or modification shall demonstrate that allowable emissions increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reduction, including secondary emissions, would not cause or contribute to air pollution in violation of:

a. Any national ambient air quality standard in any air quality control region; or

b. Any applicable maximum allowable increase over the baseline concentration in any area.

33.3(12) Air quality models.

a. All applications of air quality modeling involved in rule 567—33.3(455B) shall be based on the applicable models, data bases, and other requirements specified in Appendix W of 40 CFR Part 51, Guideline on Air Quality Models, as amended through August 12, 1996.

b. Where an air quality model specified in Appendix W of 40 CFR Part 51, Guideline on Air Quality Models, as amended through August 12, 1996, is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in 40 CFR §51.102, as amended through February 22, 2000.

33.3(13) Air quality analysis.

a. Preapplication analysis.

(1) Any application for a permit under regulations approved pursuant to this rule shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

1. For the source, each pollutant that it would have the potential to emit in a significant amount;

2. For the modification, each pollutant for which it would result in a significant net emissions increase.

(2) With respect to any such pollutant for which no national ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the department determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(3) With respect to any such pollutant, other than nonmethane hydrocarbons, for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

(4) In general, the continuous air monitoring data that is required shall have been gathered over a period of one year and shall represent the year preceding receipt of the application, except that, if the department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year, but

not to be less than four months, the data that is required shall have been gathered over at least that shorter period.

(5) The owner or operator of a proposed major stationary source or major modification of volatile organic compounds that satisfies all conditions of 40 CFR Part 51, Appendix S, Section IV, as amended through February 3, 1992, may provide postapproval monitoring data for ozone in lieu of providing preconstruction data as required under paragraph 33.3(13)"a."

b. Postconstruction monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the department determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

c. Operation of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of 40 CFR Part 58, Appendix B, as amended through October 6, 1995, during the operation of monitoring stations for purposes of this subrule.

33.3(14) Source information. The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under procedures established in accordance with this rule.

a. Such information shall include:

(1) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(2) A detailed schedule for construction of the source or modification;

(3) A detailed description as to what system of continuous emissions reduction is planned by the source or modification, emissions estimates, and any other information as necessary to determine that BACT as applicable would be applied.

b. Upon request of the department, the owner or operator shall also provide the following information:

(1) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

(2) The air quality impacts and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.

33.3(15) Additional impact analyses.

a. The owner or operator shall provide an analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

b. The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification.

33.3(16) Sources impacting federal Class I areas—additional requirements.

a. Notice to EPA. The department shall transmit to the Administrator a copy of each permit application relating to a major stationary source or major modification and provide notice to the Administrator of every action related to the consideration of such permit.

b. Federal land manager. The federal land manager and the federal official charged with direct responsibility for management of Class I lands have an affirmative responsibility to protect the air quality-related values, including visibility, of any such lands and to consider, in consultation with the Administrator, whether a proposed source or modification would have an adverse impact on such values.

c. Denial—impact on air quality-related values. A federal land manager of any such lands may present to the state, after the department's preliminary determination required under procedures developed in accordance with subrule 33.3(18), a demonstration that the emissions from the proposed source or modification would have an adverse impact on the air quality-related values, including visibility, of any federal mandatory Class I lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the department concurs with such demonstration, the department shall not issue the permit.

d. Class I variances. The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from such source would have no adverse impact on the air quality-related values of such lands, including visibility, notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with such demonstration and so certifies to the state, the department may, provided that applicable requirements are otherwise met, issue the permit with such emissions limitations as may be necessary to ensure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

Pollutant	Maximum Allowable Increase (micrograms per cubic meter)
Particulate matter:	
PM_{10}, annual arithmetic mean	17
PM_{10}, 24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide: Annual arithmetic mean	25

e. Sulfur dioxide variance by governor with federal land manager's concurrence.

(1) The owner or operator of a proposed source or modification which cannot be approved under procedures developed pursuant to paragraph 33.3(16)"d" may demonstrate to the governor that the source or modification cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for periods of 24 hours or less applicable to any Class I area and, in the case of federal mandatory Class I areas, that a variance under paragraph 33.3(16)"d" would not adversely affect the air quality-related values of the area, including visibility;

(2) The governor, after consideration of the federal land manager's recommendation, if any, and subject to the governor's concurrence, may grant, after notice and an opportunity

for a public hearing, a variance from such maximum allowable increase; and

(3) If such variance is granted, the department may issue a permit to such source or modification in accordance with provisions developed pursuant to paragraph 33.3(16)"g" provided that the applicable requirements of the plan are otherwise met.

f. Variance by the governor with the President's concurrence.

(1) The recommendations of the governor and the federal land manager shall be transferred to the President in any case where the governor recommends a variance with which the federal land manager does not concur;

(2) The President may approve the governor's recommendation if the President finds that such variance is in the national interest; and

(3) If such a variance is approved, the department may issue a permit in accordance with provisions developed pursuant to the requirements of paragraph 33.3(16)"g" provided that the applicable requirements of the SIP are otherwise met.

g. Emissions limitations for presidential or gubernatorial variance. In the case of a permit issued under procedures developed pursuant to paragraph 33.3(16)"e" or "f," the source or modification shall comply with emissions limitations as may be necessary to ensure that emissions of sulfur dioxide from the source or modification would not, during any day on which the otherwise applicable maximum allowable increases are exceeded, cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to ensure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

Maximum Allowable Increase [micrograms per cubic meter]		
Period of Exposure	Terrain Areas	
	Low	High
24-hr maximum	36	62
3-hr maximum	130	221

33.3(17) Public participation.

a. The department shall notify all applicants within 30 days as to the completeness of the application or any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application shall be the date on which the department received all required information.

b. Within one year after receipt of a complete application, the department shall:

(1) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(2) Make available in at least one location in each region in which the proposed source would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(3) Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source would be constructed, of the application, of the preliminary determination, of the degree of increment consumption that is expected from the source or modification, and of the opportunity for comment at a public hearing as well as written public comment.

(4) Send a copy of the notice of public comment to the applicant, to the Administrator and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies; the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or modification.

(5) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations.

(6) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. The department shall make all comments available for public inspection in the same locations where the department made available preconstruction information relating to the proposed source or modification.

(7) Make a final determination whether construction should be approved, approved with conditions, or disapproved.

(8) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the department made available preconstruction information and public comments relating to the source.

33.3(18) Source obligation.

a. Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, state or federal law.

b. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of subrules 33.3(10) through 33.3(19) shall apply to the source or modification as though construction had not yet commenced on the source or modification.

c. through e. Reserved.

f. The following specific provisions shall apply to projects at existing emissions units at a major stationary source, other than projects at a clean unit or at a source with a PAL, in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method for calculating "projected actual emissions" specified in rule 567—33.2(455B), paragraphs "1" through "3" of the definition of "projected actual emissions."

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;

2. Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph "3" of the definition of "projected

annual emissions" in rule 567—33.2(455B), and an explanation why such amount was excluded, and any netting calculations, if applicable.

(2) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subparagraph 33.3(18)"f"(1) to the department. Nothing in this subparagraph shall be construed to require the owner or operator of such a unit to obtain any determination from the department before beginning actual construction.

(3) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subparagraph 33.3(18)"f"(1); and calculate and maintain a record of the annual emissions, in tons per year on a calendar-year basis, for a period of five years following resumption of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

(4) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under subparagraph 33.3(18)"f"(3) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(5) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in subparagraph 33.3(18)"f"(1), exceed the baseline actual emissions (as documented and maintained pursuant to subparagraph 33.3(18)"f"(1)) by an amount that is "significant," as defined in paragraph 33.3(1)"e," for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to subparagraph 33.3(18)"f"(1). Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

1. The name, address and telephone number of the major stationary source;
2. The annual emissions as calculated pursuant to subparagraph 33.3(18)"f"(3); and
3. Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

g. The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph 33.3(18)"f" available for review upon request for inspection by the department or the general public pursuant to the requirements contained in 50 CFR §70.4(b)(3)(viii), as amended through May 15, 2001.

33.3(19) Innovative control technology.

a. An owner or operator of a proposed major stationary source or major modification may request the department to approve a system of innovative control technology.

b. The department may, with the consent of the governors of other affected states, determine that the source or modification may employ a system of innovative control technology, if:

(1) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(2) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under paragraph 33.3(10)"b," by a date specified by the department. Such date shall not be later than four years from the time of startup or seven years from permit issuance;

(3) The source or modification would meet the requirements equivalent to those in subrules 33.3(10) and 33.3(11), based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the department;

(4) The source or modification would not, before the date specified by the department:

1. Cause or contribute to any violation of an applicable national ambient air quality standard; or
2. Impact any area where an applicable increment is known to be violated;

(5) All other applicable requirements including those for public participation have been met; and

(6) The provisions of subrule 33.3(16) relating to Class I areas have been satisfied with respect to all periods during the life of the source or modification.

c. The department shall withdraw any approval to employ a system of innovative control technology made under rule 33.3(455B), if:

(1) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

(2) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(3) The department decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

d. If a source or modification fails to meet the required level of continuous emissions reduction within the specified time period, or if the approval is withdrawn in accordance with paragraph 33.3(19)"c," the department may allow the source or modification up to an additional three years to meet the requirement for the application of BACT through use of a demonstrated system of control.

33.3(20) Conditions for permit issuance. Except as explained below, a permit may not be issued to any new major stationary source or major modification, as defined in subrule 33.3(1), that would locate in any area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to Section 107 of the Act, when the source or modification would cause or contribute to a violation of any national ambient air quality standard. A major source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

	Averaging Time				
	Annual	24 Hrs.	8 Hrs.	3 Hrs.	1 Hr.
Pollutant					
SO_2	1.0 $\mu g/m^3$	5 $\mu g/m^3$	———	25 $\mu g/m^3$	———
PM_{10}	1.0 $\mu g/m^3$	5 $\mu g/m^3$	———	———	———
NO_2	1.0 $\mu g/m^3$	———	———	———	———
CO	———	———	500 $\mu g/m^3$	———	2000 μ/m^3

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A permit may be granted to a major source or major modification as identified above if it reduces the impact of its emissions upon air quality by obtaining sufficient emissions reductions to compensate for its adverse ambient air impact where the major source or major modification would otherwise contribute to a violation of any national ambient air quality standard. This subrule shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that the source is located in an area designated under Section 107 of the Act as nonattainment for that pollutant.

567—33.4(455B) Special construction permit requirements in nonattainment areas.

33.4(1) Definitions. Definitions included in this subrule apply only to rule 567—33.4(455B) (nonattainment area permitting requirements). Additional definitions applicable to rule 567—33.4(455B) are contained in rules 567—33.2(455B) and 567—33.9(455B). For purposes of rule 567—33.4(455B), the following terms shall have the meaning indicated in this subrule:

a.(1) "Major stationary source" means:

1. Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any "regulated NSR pollutant," as defined in rule 567—33.4(455B); or

2. Any physical change that would occur at a stationary source not otherwise qualifying under "1," as a major stationary source if the change would constitute a major stationary source by itself.

(2) A major source that is major for volatile organic compounds shall be considered major for ozone.

(3) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this rule whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- Coal cleaning plants (with thermal dryers);
- Kraft pulp mills;
- Portland cement plants;
- Primary zinc smelters;
- Iron and steel mill plants;
- Primary aluminum ore reduction plants;
- Primary copper smelters;
- Municipal incinerators capable of charging more than 250 tons of refuse per day;
- Hydrofluoric, sulfuric, and nitric acid plants;
- Petroleum refineries;
- Lime plants;
- Phosphate rock processing plants;
- Coke oven batteries;
- Sulfur recovery plants;
- Carbon black plants (furnace process);
- Primary lead smelters;
- Fuel conversion plants;
- Sintering plants;
- Secondary metal production plants;
- Chemical process plants;
- Fossil-fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;
- Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- Taconite ore processing plants;
- Glass fiber processing plants; and
- Charcoal production plants.
- Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

b. "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source. All terms used in this paragraph shall have the meanings indicated in this subrule.

(1) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

(2) A physical change or change in the method of operation shall not include:

1. Use of an alternative fuel or raw material by reason of any order under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

2. Use of an alternative fuel by reason of an order or rule under Section 125 of the Act;

3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

4. Use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any enforceable permit condition, or that the source is approved to use under any enforceable permit condition;

5. An increase in the hours of operation or in the production rate, unless such change would be prohibited under any enforceable permit condition.

6. Any change in ownership at a stationary source;

7. The addition, replacement, or use of a PCP, as defined in rule 567—33.2(455B), at an existing emissions unit meeting the requirements of rule 567—33.8(455B). A replacement control technology must provide more effective emissions control than that of the replaced control technology to qualify for this exclusion;

8. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the requirements within the SIP; and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated.

(3) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under rule 567—33.9(455B) for a PAL for that pollutant. Instead, the definition under rule 567—33.9(455B) shall apply.

c.(1) "Net emissions increase" means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the following exceeds zero:

- The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated according to the applicability requirements under subrule 33.4(2); and
- Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases un-

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der paragraph 33.4(1)"c" shall be determined as provided for in rule 567—33.2(455B) under the definitions of "baseline actual emissions" in rule 567—33.2(455B), except that paragraphs "1"(c) and "2"(d) of that definition shall not apply.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if the increase or decrease in actual emissions occurs within five years before the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if:

- The increase or decrease in actual emissions occurs within the contemporaneous time period, as noted in subparagraph 33.4(1)"c"(2); and
- The department has not relied on the increase or decrease in actual emissions in issuing a permit for the source under this rule, which permit is in effect when the increase in actual emissions from the particular change occurs; and
- The increase or decrease in emissions did not occur at a clean unit, except as provided in subrules 33.6(8) and 33.7(10) for "netting at clean units."

(4) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(5) A decrease in actual emissions is creditable only to the extent that:

- The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
- The decrease in actual emissions is an enforceable permit condition at and after the time that actual construction on the particular change begins;
- The department has not relied on the decrease in actual emissions in issuing any permit under regulations approved under rule 567—33.3(455B) or 567—33.4(455B), or the department has not relied on the decrease in actual emissions in demonstrating attainment or reasonable further progress;
- The decrease in actual emissions has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and
- The decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a clean unit under rule 567—33.7(455B). That is, once an emissions unit has been designated as a clean unit, the owner or operator cannot later use the emissions reduction from the air pollution control measures on which the clean unit designation is based in calculating the net emissions increase for another emissions unit, i.e., must not use that reduction in a "netting analysis" for another emissions unit. However, any new emissions reductions that were not relied upon in a PCP excluded pursuant to rule 567—33.8(455B) or for the clean unit designation are creditable to the extent they meet the requirements in paragraph 33.8(6)"d" for "generation of emissions reduction credits" for the PCP and subrules 33.6(8) and 33.7(10) for "netting at clean units" for a clean unit.

(6) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(7) The definition of "actual emissions," numbered paragraph "2," in rule 567—33.2(455B) shall not apply for determining creditable increases and decreases.

d. "Regulated NSR pollutant," for purposes of this rule, means the following:

(1) Nitrogen oxides or any volatile organic compound;

(2) Any pollutant for which a national ambient air quality standard has been promulgated; or

(3) Any pollutant that is a constituent or precursor of a general pollutant listed under subparagraph 33.4(1)"d"(1) or (2), provided that a constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant.

e. "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

- Carbon monoxide: 100 tons per year (tpy)
- Nitrogen oxides: 40 tpy
- Sulfur dioxide: 40 tpy
- Ozone: 40 tpy of volatile organic compounds
- Lead: 0.6 tpy

f. "Significant emissions increase" means, for a "regulated NSR pollutant," as defined in paragraph 33.4(1)"d," an increase in emissions that is "significant," as defined in paragraph 33.4(1)"e," for that pollutant.

33.4(2) Applicability. The requirements of rule 567—33.4(455B) apply to the construction of any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment under Section 107(d)(1)(A)(i) of the Act, if the stationary source or modification would locate anywhere in the designated nonattainment area.

a. Except as otherwise provided in paragraphs 33.4(2)"g" and "h," and consistent with the definition of "major modification" contained in paragraph 33.4(1)"b," a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a "significant emissions increase," as defined in paragraph 33.4(1)"f"; and a "net emissions increase," as defined in paragraph 33.4(1)"c," which is "significant," as defined in paragraph 33.4(1)"e." The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

b. The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs 33.4(2)"c" through "f." The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition of "net emissions increase" in paragraph 33.4(1)"c." Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

c. Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the "projected actual emissions," as defined in rule 567—33.2(455B), and

the "baseline actual emissions," as defined in rule 567—33.2(455B), for each existing emissions unit, equals or exceeds the significant amount for that pollutant, as found in paragraph 33.4(1)"e."

d. Actual-to-potential test for projects that involve only construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the "potential to emit," as defined in rule 567—33.2(455B), from each new emissions unit following completion of the project and the "baseline actual emissions" for a new emissions unit, as defined in rule 567—33.2(455B), before the project equals or exceeds the significant amount for that pollutant, as found in paragraph 33.4(1)"e."

e. Emissions test for projects that involve clean units. For a project that will be constructed and operated at a clean unit without causing the emissions unit to lose its clean unit designation, no emissions increase is deemed to occur.

f. Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs 33.4(2)"c" through "e" as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant, as found in paragraph 33.4(1)"e." For example, if a project involves both an existing emissions unit and a clean unit, the projected increase is determined by summing the values determined using the method specified in paragraph 33.4(2)"c" for the existing unit and determined using the method specified in paragraph 33.4(2)"e" for the clean unit.

g. For any major stationary source with a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under rule 567—33.9(455B).

h. An owner or operator undertaking a "PCP," as defined in rule 567—33.2(455B), shall comply with the requirements under rule 567—33.8(455B).

33.4(3) Emissions offsets.

a. For sources and modifications subject to any preconstruction review program according to rule 567—33.4(455B), the baseline for determining credit for emissions reductions is the emissions limit under the SIP in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

(1) The demonstration of reasonable further progress and attainment of national ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area for which the preconstruction review program was adopted; or

(2) The SIP does not contain an emissions limitation for that source or source category.

b. If a major source or major modification is proposed to be constructed in an area designated nonattainment for a "regulated NSR pollutant," as defined under subrule 33.4(1), the emissions offsets must be achieved prior to startup of the major source or major modification.

If a major source or major modification is proposed to be constructed in an area designated attainment or unclassified for a "regulated NSR pollutant," as defined under subrule 33.4(1), but the modeled (EPA-approved guideline model) worst case ground level pollutant concentration due to the major source or major modification in an area designated nonattainment for that pollutant is greater than or equal to the concentrations listed in the table under subrule 33.3(20), then the emissions offsets must be achieved prior to startup of the major source or major modification.

c. Where the emissions limit under the SIP allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential.

d. For an existing fuel combustion source, credit shall be based on the allowable emissions under the SIP for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable, or actual, emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The department may require a demonstration that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

e. Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, and federally enforceable, and if the area has an EPA-approved attainment plan.

In addition, the shutdown or curtailment is creditable only if it occurred on or after the date specified for this purpose in the plan, and if such date is on or after the date of the most recent emissions inventory used in the plan's demonstration of attainment. Where the plan does not specify a cutoff date for shutdown credits, the date of the most recent emissions inventory or attainment demonstration, as the case may be, shall apply. However, in no event may credit be given for shutdowns which occurred prior to January 1, 1978.

For purposes of paragraph 33.4(3)"e," the department may choose to consider a prior shutdown or curtailment to have occurred after the date of the department's most recent emissions inventory, if the inventory explicitly includes as current existing emissions the emissions from such previously shut down or curtailed sources.

Such reductions may be credited in the absence of an approved attainment demonstration only if the shutdown or curtailment occurred on or after the date on which the new source permit application is filed, or, if the applicant can establish that the proposed new source is a replacement for the shut down or curtailed source, and meets the cutoff date provisions described above.

f. If the emissions from a major stationary source or major modification are proposed to be offset by reducing the operating capacity of another existing source, then credit may be allowed for this offset, provided that proper documentation, such as stack test results, that shows the effect on emissions due to de-rating is submitted to the department. The permit for an existing source must be amended to limit the operating capacity before offsets will be allowed.

g. If the emissions from the major stationary source or major modification are proposed to be offset by reduction of emissions for a source not owned or operated by the owner or operator of the major stationary source or major modification, then credit may be allowed for such reductions, provided that the external source's permit is amended to require reduced emissions or a consent order is entered into by the department and the existing source. Consent orders for external offsets shall be incorporated into the SIP and be approved by EPA before offset credit may be granted.

h. If control equipment is proposed for a presently uncontrolled existing source for which controls are not required

by rule, then credit may be allowed for any reduction below the source's potential to emit. The reduction shall be proposed at the time of permit application to the department. Any such reductions which occurred prior to January 1, 1978, shall not be accepted by the department for offsets.

i. If more effective control equipment for a source already in compliance with the SIP allowable emissions level is proposed to offset the emissions of a major stationary source or major modification in or affecting a nonattainment area, then the difference in emissions between the actual level on January 1, 1978, and the new level may be credited for offsets. This offset provision does not allow credit to be granted for any reductions in actual emissions required by the SIP prior to January 1, 1978.

j. No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977). (This document is also available from Office of Air Quality Planning and Standards, (MD-15), Research Triangle Park, NC 27711.)

k. The department's procedures relating to the permissible location of offsetting emissions shall follow those set out in 40 CFR Part 51, Appendix S, Section IV.D, as amended through February 3, 1992.

l. Credit for an emissions reduction can be claimed to the extent that the department has not relied on it in issuing any permit under regulations approved pursuant to rule 567—33.3(455B) or 567—33.4(455B), or the department has not relied on it in demonstrating attainment or reasonable further progress.

m. Decreases in actual emissions resulting from the installation of add-on control technology or application of pollution prevention measures that were relied upon in designating an emissions unit as a clean unit or a project as a PCP cannot be used as offsets.

n. Decreases in actual emissions occurring at a clean unit cannot be used as offsets, except as provided in subrules 33.6(8) and 33.7(10). Similarly, decreases in actual emissions occurring at a PCP cannot be used as offsets, except as provided in paragraph 33.8(6)"d."

o. The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the Act shall be determined by summing the difference between the "allowable emissions" after the "modification," as each term is defined in rule 567—33.2(455B), and the "actual emissions" before the "modification," as each term is defined in rule 567—33.2(455B), for each emissions unit.

p. The department's procedures relating to banking of emissions offset credit shall follow those set out in 40 CFR Part 51, Appendix S, Section IV.D.5, as amended through February 3, 1992.

q. All emissions reductions claimed as offset credit shall be federally enforceable.

33.4(4) Control technology review.

a. Lowest achievable emissions rate. A new or modified major stationary source in a nonattainment area shall comply with the LAER, as defined in rule 567—33.2(455B).

b. For phased construction projects, the determination of LAER shall be reviewed and modified as appropriate at the latest reasonable time frame that occurs no later than 18 months prior to the commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of the LAER for the source.

c. State implementation plan, new source performance standards, and emissions standards for hazardous air pollutants. A major stationary source or major modification shall meet each applicable emissions limitation under the SIP and each applicable emissions standard under 567—Chapter 23, subrules 23.1(2) through 23.1(5).

33.4(5) Compliance of existing sources. If a new major stationary source or major modification is subject to rule 567—33.4(455B), then all major stationary sources owned or operated by the applicant, or by any entity controlling, controlled by, or under common control of the applicant, in Iowa shall be either in compliance with applicable emissions standards or under a compliance schedule approved by the commission.

33.4(6) Alternative site analysis. The permit application shall contain a submittal of an alternative site analysis. Such submittal shall include an analysis of alternative sites, sizes, production processes and environmental control techniques for the proposed source. The analysis must demonstrate that benefits of the proposed source significantly outweigh the environmental and social costs that would result from its location, construction or modification. Such analysis shall be completed prior to permit issuance.

33.4(7) Additional conditions for permit approval.

a. For sources subject to the air pollution control requirements under subrule 33.4(4), the permit shall require the source to conduct monitoring, to keep records, and to provide reports necessary to determine compliance with, and deviations from, applicable requirements.

b. The department shall not issue the permit if the Administrator has determined that the applicable SIP is not being adequately implemented for the nonattainment area in which the proposed major stationary source or major modification is being constructed.

33.4(8) Public availability of information. No permit shall be issued until notice and opportunity for comment are made available in accordance with the procedures set forth in 40 CFR 51.161, as amended through November 7, 1986.

33.4(9) Source obligation.

a. Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, state or federal law.

b. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this rule shall apply to the source or modification as though construction had not yet commenced on the source or modification.

33.4(10) Additional requirements for major stationary sources. The following specific provisions apply to projects at existing emissions units at a major stationary source, other than projects at a clean unit or at a source with a PAL, in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method for calculating "projected actual emissions" specified in rule 567—33.2(455B), paragraphs "1" through "3" of the definition of "projected actual emissions."

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a. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(1) A description of the project;

(2) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(3) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph "3" of the definition of "projected annual emissions" in rule 567—33.2(455B), and an explanation why such amount was excluded, and any netting calculations, if applicable.

b. If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in paragraph 33.4(10)"a" to the department. Nothing in paragraph 33.4(10)"b" shall be construed to require the owner or operator of such a unit to obtain any determination from the department before beginning actual construction.

c. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in subparagraph 33.4(10)"a"(2); and shall calculate and maintain a record of the annual emissions, in tons per year on a calendar-year basis, for a period of five years following resumption of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

d. If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under paragraph 33.4(10)"c" setting out the unit's annual emissions during the year that preceded submission of the report.

e. If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in paragraph 33.4(10)"a" exceed the baseline actual emissions, as documented and maintained pursuant to subparagraph 33.4(10)"a"(3), by a significant amount, as found in paragraph 33.4(1)"e," for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph 33.4(10)"a." Such report shall be submitted to the department within 60 days after the end of such year.

The report shall contain the following:

(1) The name, address and telephone number of the major stationary source;

(2) The annual emissions as calculated pursuant to paragraph 33.4(10)"c"; and

(3) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

f. The owner or operator of the source shall make the information required to be documented and maintained pursuant to subrule 33.4(10) available for review upon a request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR §70.4(b)(3)(viii), as amended through May 15, 2001.

567—33.5(455B) Nonattainment area designations. Section 107(d) of the Act, 41 U.S.C. §7457(d), requires each state to submit to the Administrator of the federal Environmental Protection Agency a list of areas that exceed the national ambient air quality standards, that are lower than those standards, or that cannot be classified on the basis of current data. A list of Iowa's nonattainment area designations is found at 40 CFR Part 81.316, as amended through April 30, 2004. The commission uses the document entitled "Criteria for Revising Nonattainment Area Designations"* (June 14, 1979) to determine when and to what extent the list will be revised and resubmitted.

*On file with the Administrative Rules Coordinator; also available from the department.

567—33.6(455B) Clean unit test for emissions units that are subject to BACT or LAER. The owner or operator of a major stationary source may choose the option of using the clean unit test, provided that the requirements in this rule are followed. The clean unit test may be used to determine whether emissions increases at a clean unit are part of a project that is a major modification.

33.6(1) Applicability. The provisions of rule 567—33.6(455B) apply to any emissions unit for which the department has issued a major NSR permit within the last ten years. Except as specified, the requirements in rule 567—33.6(455B) for the clean unit test are applicable to both the PSD and nonattainment area programs. For purposes of rule 567—33.6(455B), the term "BACT/LAER" shall mean "BACT or LAER" for purposes of PSD permitting and standards and shall mean "LAER" for purposes of nonattainment area permitting and standards.

33.6(2) General provisions for clean units.

a. Any project for which the owner or operator begins actual construction after the effective date of the clean unit designation, as determined in accordance with paragraph 33.6(2)"d," and before the expiration date, as determined in accordance with paragraph 33.6(2)"e," will be considered to have occurred while the emissions unit was a clean unit.

b. If a project at a clean unit does not cause the need for a change in the emissions limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT/LAER and the project would not alter any physical or operational characteristics that formed the basis for the BACT/LAER determination as specified in subparagraph 33.6(2)"f"(4), the emissions unit remains a clean unit.

c. If a project causes the need for a change in the emissions limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT/LAER or the project would alter any physical or operational characteristics that formed the basis for the BACT/LAER determination as specified in subparagraph 33.6(2)"f"(4), then the emissions unit loses its designation as a clean unit upon issuance of the necessary permit revisions (unless the unit requalifies as a clean unit pursuant to paragraph 33.6(3)"e"). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the clean unit designation ends immediately prior to the time when actual construction begins.

d. A project that causes an emissions unit to lose its designation as a clean unit is subject to the following applicability requirements as if the emissions unit is not a clean unit:

(1) Paragraphs 33.3(2)"c" through "f" and 33.3(2)"h" for PSD projects; or

(2) Paragraphs 33.4(2)"a" through "d" and 33.4(2)"f" for nonattainment area projects.

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e. Certain emissions units with PSD permits (for nonattainment area projects only). For emissions units that meet the requirements of subparagraphs 33.6(2)"e"(1) and (2), the BACT level of emissions reductions and work practice requirements shall satisfy the requirement for LAER in meeting the requirements for clean units under subrules 33.6(3) through 33.6(8). For these emissions units, all requirements for the LAER determination under paragraphs 33.6(2)"b" and "c" shall also apply to the BACT permit terms and conditions. In addition, the requirements of subparagraph 33.6(7)"a"(2) do not apply to emissions units that qualify for clean unit status under paragraph 33.6(2)"e."

(1) The emissions unit must have received a PSD permit within the last ten years and such permit must require the emissions unit to comply with BACT.

(2) The emissions unit must be located in an area that was redesignated as nonattainment for the relevant pollutant(s) after issuance of the PSD permit and before the effective date of the clean unit test provisions in the area.

33.6(3) Qualifying or requalifying to use the clean unit applicability test. An emissions unit automatically qualifies as a clean unit when the unit meets the criteria in paragraphs 33.6(3)"c" and "d." After the original clean unit designation expires in accordance with subrule 33.6(5) or is lost pursuant to paragraph 33.6(2)"c," such emissions unit may requalify as a clean unit either under paragraph 33.6(3)"e" or under the clean unit provisions in rule 567—33.7(455B).

a. To requalify as a clean unit under paragraph 33.6(3)"e," the emissions unit must:

(1) For PSD-subject emissions units, obtain a new major NSR permit issued through the applicable PSD program and meet all the criteria in paragraph 33.6(3)"e."

(2) For emissions units in nonattainment areas, obtain a new major NSR permit issued through the applicable nonattainment major NSR program and meet all of the criteria in paragraph 33.6(3)"e."

b. The clean unit designation applies individually for each pollutant emitted by the emissions unit.

c. Permitting requirement. The emissions unit must have received a major NSR permit within the past ten years. The owner or operator must maintain and be able to provide information that would demonstrate that this permitting requirement is met.

d. Qualifying air pollution control technologies. Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology, which includes "pollution prevention," as defined under rule 567—33.2(455B) or work practices, that meets both of the following requirements in subparagraphs 33.6(3)"d"(1) and (2).

(1) The control technology achieves the BACT/LAER level of emissions reductions as determined through issuance of a major NSR permit within the past ten years. However, the emissions unit is not eligible for the clean unit designation if the BACT/LAER determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.

(2) The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.

e. Requalifying for the clean unit designation. The emissions unit must obtain a new major NSR permit that requires compliance with the current-day BACT/LAER, and the emissions unit must meet the requirements in paragraphs 33.6(3)"c" and "d."

33.6(4) Effective date of the clean unit designation. The effective date of an emissions unit's clean unit designation, i.e., the date on which the owner or operator may begin to use the clean unit test to determine whether a project at the emissions unit is a major modification, is determined according to the applicable paragraph 33.6(4)"a" or "b."

a. Original clean unit designation, and emissions units that requalify as clean units by implementing a new control technology to meet current-day BACT/LAER. The effective date is the date that the emissions unit's air pollution control technology is placed into service or three years after the issuance date of the major NSR permit, whichever is earlier, but no sooner than the date that provisions for the clean unit applicability test are approved by the Administrator for incorporation into the SIP and become effective for the state.

b. Emissions units that requalify for the clean unit designation using an existing control technology. The effective date is the date the new, major NSR permit is issued.

33.6(5) Expiration of clean unit designation. An emissions unit's clean unit designation expires, i.e., the date on which the owner or operator may no longer use the clean unit test to determine whether a project affecting the emissions unit is, or is part of, a major modification, according to the applicable paragraph 33.6(5)"a" or "b."

a. Original clean unit designation, and emissions units that requalify as clean units by implementing new control technology to meet current-day BACT/LAER. For any emissions unit that automatically qualifies as a clean unit under paragraphs 33.6(3)"c" and "d" or requalifies by implementing new control technology to meet current-day BACT/LAER under paragraph 33.6(3)"e," the clean unit designation expires ten years after the effective date, or the date the equipment went into service, whichever is earlier; or it expires at any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subrule 33.6(7).

b. Emissions units that requalify for the clean unit designation using an existing control technology. For any emissions unit that requalifies as a clean unit under paragraph 33.6(3)"e" using an existing control technology, the clean unit designation expires ten years after the effective date; or it expires any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subrule 33.6(7).

33.6(6) Required Title V permit content for a clean unit. After the effective date of the clean unit designation, and in accordance with the provisions of the applicable Title V permit program under rules 567—22.100(455B) through 567—22.116(455B), but no later than when the Title V permit is renewed, the Title V permit for the major stationary source must include the following terms and conditions in paragraphs 33.6(6)"a" through "f" for a clean unit.

a. A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutant(s) for which this clean unit designation applies.

b. The effective date of the clean unit designation. If this date is not known when the clean unit designation is initially recorded in the Title V permit, e.g., because the air pollution control technology is not yet in service, the permit must describe the event that will determine the effective date, e.g., the date the control technology is placed into service. Once the effective date is determined, the owner or operator must notify the department of the exact date. This specific effective date must be added to the source's Title V permit at the

first opportunity, such as at the time of a modification, revision, reopening, or renewal of the Title V permit for any reason, whichever comes first, but in no case later than the next renewal.

c. The expiration date of the clean unit designation. If this date is not known when the clean unit designation is initially recorded into the Title V permit, e.g., because the air pollution control technology is not yet in service, then the permit must describe the event that will determine the expiration date, e.g., the date the control technology is placed into service. Once the expiration date is determined, the owner or operator must notify the department of the exact date. The expiration date must be added to the source's Title V permit at the first opportunity, such as at the time of a modification, revision, reopening, or renewal of the Title V permit for any reason, whichever comes first, but in no case later than the next renewal.

d. All emissions limitations and work practice requirements adopted in conjunction with BACT/LAER, and any physical or operational characteristics that formed the basis for the BACT/LAER determination, e.g., possibly the emissions unit's capacity or throughput.

e. Monitoring, record-keeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation. (See subrule 33.6(7).)

f. Terms reflecting the owner's or operator's duties to maintain the clean unit designation as presented in subrule 33.6(7) and the consequences of failing to do so.

33.6(7) Maintaining the clean unit designation. To maintain the clean unit designation, the owner or operator must conform to all the restrictions listed in paragraphs 33.6(7)"a" through "c." This subrule applies independently to each pollutant for which the emissions unit has the clean unit designation. That is, failing to conform to the restrictions for one pollutant affects the clean unit designation only for that pollutant.

a. The clean unit must comply with the emissions limitation(s) and work practice requirements adopted in conjunction with the BACT/LAER that is recorded in the major NSR permit and subsequently reflected in the Title V permit.

(1) The owner or operator may not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the BACT/LAER determination, e.g., possibly the emissions unit's capacity or throughput.

(2) The clean unit may not emit above a level that has been offset (nonattainment area projects only).

b. The clean unit must comply with any terms and conditions in the Title V permit related to the clean unit designation.

c. The clean unit must continue to control emissions using the specific air pollution control technology that was the basis for the clean unit designation. If the emissions unit or control technology is replaced, then the clean unit designation ends.

33.6(8) Offsets and netting at clean units. Emissions changes that occur at a clean unit must not be included in calculating a significant net emissions increase, i.e., must not be used in a "netting analysis," or be used for generating offsets in nonattainment areas, unless such use occurs before the effective date of the clean unit designation, or after the clean unit designation expires; or unless the emissions unit reduces emissions below the level that qualified the unit as a clean unit. However, if the clean unit reduces emissions below the level that qualified the unit as a clean unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

33.6(9) Effect of redesignation on the clean unit designation. The clean unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. That is, if a clean unit is located in an attainment area and the area is redesignated to nonattainment, its clean unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the clean unit designation. However, if an existing clean unit designation expires, it must requalify under the requirements that are currently applicable in the area.

567—33.7(455B) Clean unit provisions for emissions units that achieve an emissions limitation comparable to BACT/LAER. The plan shall provide an owner or operator of a major stationary source the option of using the clean unit test to determine whether emissions increases at a clean unit are part of a project that is a major modification according to the provisions in this rule.

33.7(1) Applicability. The provisions of this rule apply to emissions units which do not qualify as clean units under rule 567—33.6(455B), but which are achieving a level of emissions control comparable to BACT/LAER, as determined by the department in accordance with this rule. Except as specified, the requirements in rule 567—33.7(455B) for the clean unit test are applicable to both the PSD and nonattainment area programs. For purposes of rule 567—33.7(455B), the term "BACT/LAER" shall mean "BACT or LAER" for purposes of PSD permitting and standards and shall mean "LAER" for purposes of nonattainment area permitting and standards.

33.7(2) General provisions for clean units.

a. Any project for which the owner or operator begins actual construction after the effective date of the clean unit designation, as determined in accordance with subrule 33.7(5), and before the expiration date, as determined in accordance with subrule 33.7(6), will be considered to have occurred while the emissions unit was a clean unit.

b. If a project at a clean unit does not cause the need for a change in the emissions limitations or work practice requirements in the permit for the unit that have been determined, pursuant to subrule 33.7(4), to be comparable to BACT/LAER and the project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT/LAER, as specified in paragraph 33.7(8)"d," the emissions unit remains a clean unit.

c. If a project causes the need for a change in the emissions limitations or work practice requirements in the permit for the unit that have been determined, pursuant to subrule 33.7(4), to be comparable to BACT/LAER or if the project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT/LAER, as specified in paragraph 33.7(8)"d," then the emissions unit loses its designation as a clean unit upon issuance of the necessary permit revisions, unless the unit requalifies as a clean unit pursuant to para-

graph 33.7(3)"d." If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the clean unit designation ends immediately prior to the time when actual construction begins.

d. A project that causes an emissions unit to lose its designation as a clean unit is subject to the following applicability requirements, as if the emissions unit is not a clean unit:

(1) Paragraphs 33.3(2)"c" through "f" and 33.3(2)"h" for PSD projects; or

(2) Paragraphs 33.4(2)"a" through "d" and 33.4(2)"f" for nonattainment area projects.

33.7(3) Qualifying or requalifying to use the clean unit applicability test. An emissions unit qualifies as a clean unit when the unit meets the criteria in paragraphs 33.7(3)"a" through "c." After the original clean unit designation expires in accordance with subrule 33.7(6) or is lost pursuant to paragraph 33.7(2)"c," such emissions unit may requalify as a clean unit either under paragraph 33.7(3)"d" or under the clean unit provisions in rule 567—33.6(455B). To requalify as a clean unit under paragraph 33.7(3)"d," the emissions unit must obtain a new permit issued in accordance with subrules 33.7(7) and 33.7(8) and meet all the criteria in paragraph 33.7(3)"d." The department will make a separate clean unit designation for each pollutant emitted by the emissions unit for which the emissions unit qualifies as a clean unit.

a. Qualifying air pollution control technologies. Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology, which includes "pollution prevention," as defined under rule 567—33.2(455B) or work practices, that meets both the following requirements.

(1) The owner or operator has demonstrated that the emissions unit's control technology is comparable to BACT/LAER according to the requirements of subrule 33.7(4). However, the emissions unit is not eligible for the clean unit designation if its emissions are not reduced below the level of a standard, uncontrolled emissions unit of the same type, e.g., if the BACT/LAER determinations to which it is compared have resulted in a determination that no control measures are required.

(2) The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.

b. Impact of emissions from the unit. The department shall determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any national ambient air quality standard or PSD increment, or adversely impact an air quality-related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

c. Date of installation. An emissions unit may qualify as a clean unit even if the control technology on which the clean unit designation is based was installed before the effective date of SIP requirements to implement the requirements of this rule. However, for such emissions units, the owner or operator must apply for the clean unit designation within two years after the SIP requirements become effective. For technologies installed after the SIP requirements become effective, the owner or operator must apply for the clean unit designation at the time the control technology is installed.

d. Requalifying as a clean unit. The emissions unit must obtain a new permit, pursuant to requirements in subrules 33.7(7) and 33.7(8), that demonstrates that the emissions unit's control technology is achieving a level of emissions control comparable to current-day BACT/LAER, and the emissions unit must meet the requirements in subparagraph 33.7(3)"a"(1) and paragraph 33.7(3)"b."

33.7(4) Demonstrating control effectiveness comparable to BACT/LAER. The owner or operator may demonstrate that the emissions unit's control technology is comparable to BACT/LAER for purposes of paragraph 33.7(3)"a" according to either paragraph 33.7(4)"a" or "b." Paragraph 33.7(4)"c" specifies the time for making this comparison.

a. Comparison to previous BACT and LAER determinations. The Administrator maintains an on-line data base of previous determinations of RACT, as defined in 40 CFR 51.100, as amended through April 9, 1998, BACT, and LAER in the RACT/BACT/LAER Clearinghouse (RBLC). The emissions unit's control technology is presumed to be comparable to BACT/LAER if it achieves an emissions limitation that is equal to or better than the average of the emissions limitations achieved by all the sources for which a BACT/LAER determination has been made within the preceding five years and entered into the RBLC, and for PSD-subject emissions units only, is technically feasible to apply the BACT/LAER control technology to the emissions unit. The department shall also compare this presumption to any additional BACT/LAER determinations of which it is aware and shall consider any information on achieved-in-practice pollution control technologies provided during the public comment period, to determine whether any presumptive determination that the control technology is comparable to BACT/LAER is correct.

b. The substantially-as-effective test. The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as BACT/LAER. In addition, any other person may present evidence related to whether the control technology is substantially as effective as BACT/LAER during the public participation process required under subrule 33.7(7). The department shall consider such evidence on a case-by-case basis and determine whether the emissions unit's air pollution control technology is substantially as effective as BACT/LAER.

c. Time of comparison.

(1) Emissions units with control technologies that are installed before the effective date of SIP requirements implementing rule 567—33.7(455B). The owner or operator of an emissions unit whose control technology is installed before the effective date of SIP requirements implementing rule 567—33.7(455B) shall, at the option of the owner or operator, either demonstrate that the emissions limitation achieved by the emissions unit's control technology is comparable to the BACT/LAER requirements that applied at the time the control technology was installed or demonstrate that the emissions limitation achieved by the emissions unit's control technology is comparable to current-day BACT/LAER requirements. The expiration date of the clean unit designation as specified in subrule 33.7(6) will depend on which option the owner or operator uses.

(2) Emissions units with control technologies that are installed after the effective date of SIP requirements implementing rule 567—33.7(455B). The owner or operator shall demonstrate that the emissions limitation achieved by the emissions unit's control technology is comparable to current-day BACT/LAER requirements.

33.7(5) Effective date of the clean unit designation. The effective date of an emissions unit's clean unit designation, i.e., the date on which the owner or operator may begin to use the clean unit test to determine whether a project involving the emissions unit is a major modification, is the date on which the permit required by subrule 33.7(7) is issued or the date on which the emissions unit's air pollution control technology is placed into service, whichever is later.

33.7(6) Expiration of clean unit designation. If the owner or operator demonstrates that the emissions limitation achieved by the emissions unit's control technology is comparable to the BACT/LAER requirements that applied at the time the control technology was installed, then the clean unit designation expires ten years from the date that the control technology was installed. For all other emissions units, the clean unit designation expires ten years from the effective date of the clean unit designation, as determined according to subrule 33.7(5). In addition, for all emissions units, the clean unit designation expires any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subrule 33.7(9).

33.7(7) Procedures for designating emissions units as clean units. The department shall designate an emissions unit a clean unit only by issuing a permit through a permitting program that has been approved by the Administrator, including requirements for public notice of the proposed clean unit designation and opportunity for public comment. Such permit must also meet the requirements in subrule 33.7(8).

33.7(8) Required permit content. The permit required by subrule 33.7(7) shall include the terms and conditions set forth in paragraphs 33.7(8)"a" through "f." Such terms and conditions shall be incorporated into the major stationary source's Title V permit in accordance with the provisions of the applicable Title V permit program under rules 567—22.100(455B) through 567—22.116(455B), but no later than when the Title V permit is renewed.

a. A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutant(s) for which the clean unit designation applies.

b. The effective date of the clean unit designation. If this date is not known when the department issues the permit, e.g., because the air pollution control technology is not yet in service, then the permit must describe the event that will determine the effective date (e.g., the date the control technology is placed into service). Once the effective date is known, then the owner or operator must notify the department of the exact date. This specific effective date must be added to the source's Title V permit at the first opportunity, such as at the time of a modification, revision, reopening, or renewal of the Title V permit for any reason, whichever comes first, but in no case later than the next renewal.

c. The expiration date of the clean unit designation. If this date is not known when the department issues the permit, e.g., because the air pollution control technology is not yet in service, then the permit must describe the event that will determine the expiration date, e.g., the date the control technology is placed into service. Once the expiration date is known, then the owner or operator must notify the department of the exact date. The expiration date must be added to the source's Title V permit at the first opportunity, such as at the time of a modification, revision, reopening, or renewal of the Title V permit for any reason, whichever comes first, but in no case later than the next renewal.

d. All emissions limitations and work practice requirements adopted in conjunction with emissions limitations necessary to ensure that the control technology continues to achieve an emissions limitation comparable to BACT/LAER, and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT/LAER, e.g., possibly the emissions unit's capacity or throughput.

e. Monitoring, record-keeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its clean unit designation. (See subrule 37.7(9).)

f. Terms reflecting the owner or operator's duties to maintain the clean unit designation as presented in subrule 33.7(9) and the consequences of failing to do so.

33.7(9) Maintaining the clean unit designation. To maintain the clean unit designation, the owner or operator must conform to all the restrictions listed in paragraphs 33.7(9)"a" through "e." This subrule applies independently to each pollutant for which the department has designated the emissions unit as a clean unit. That is, failing to conform to the restrictions for one pollutant affects the clean unit designation only for that pollutant.

a. The clean unit must comply with the emissions limitation(s) and work practice requirements adopted to ensure that the control technology continues to achieve emissions control comparable to BACT/LAER.

b. The owner or operator may not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emissions control that is comparable to BACT/LAER, e.g., possibly the emissions unit's capacity or throughput.

c. The clean unit may not emit above a level that has been offset in a nonattainment area.

d. The clean unit must comply with any terms and conditions in the Title V permit related to the clean unit designation.

e. The clean unit must continue to control emissions using the specific air pollution control technology that was the basis for the clean unit designation. If the emissions unit or control technology is replaced, then the clean unit designation ends.

33.7(10) Offsets and netting at clean units. Emissions changes that occur at a clean unit must not be included in calculating a significant net emissions increase, i.e., must not be used in a "netting analysis," or be used for generating offsets in nonattainment areas, unless such use occurs before the effective date of SIP requirements adopted to implement rule 567—33.7(455B) or after the clean unit designation expires; or unless the emissions unit reduces emissions below the level that qualified the unit as a clean unit. However, if the clean unit reduces emissions below the level that qualified the unit as a clean unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the emissions unit's new emissions limitation if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

33.7(11) Effect of redesignation on the clean unit designation. The clean unit designation of an emissions unit is not affected by redesignation of the attainment designation of the area in which it is located. That is, if a clean unit is located in an attainment area and the area is redesignated to be in nonat-

tainment, its clean unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the clean unit designation. However, if a clean unit's designation expires or is lost pursuant to paragraph 33.6(2)"c" or 33.7(2)"c," the unit must requalify under the requirements that are currently applicable.

567—33.8(455B) Procedural requirements for pollution control project (PCP) exclusion. This rule provides that a major stationary source that undertakes a pollution control project (PCP) at an existing emissions unit shall be excluded from the definitions of a major modification, provided that the conditions in this rule are met. Except as otherwise specified, the PCP exclusion procedures are the same for PSD and nonattainment area requirements.

33.8(1) Before an owner or operator begins actual construction of a PCP, the owner or operator must submit a notice to the department if the project is listed under the definition of "pollution control project" in rule 567—33.2(455B), or if the project is not listed in rule 567—33.2(455B), then the owner or operator must submit a permit application and obtain approval from the department consistent with the requirements in subrule 33.8(5) to use the PCP exclusion. Regardless of whether the owner or operator submits a notice or a permit application, the project must meet the requirements in subrule 33.8(2), and the notice or permit application must contain the information required in subrule 33.8(3).

33.8(2) Any project that relies on the PCP exclusion must meet the requirements in paragraphs 33.8(2)"a" and "b."

a. Environmentally beneficial analysis. The environmental benefit from the emissions reductions of pollutants regulated under the Act must outweigh the environmental detriment of emissions increases in pollutants regulated under the Act. A statement that a technology listed under the definition of "pollution control project" in rule 567—33.2(455B) is being used shall be presumed to satisfy this requirement.

b. Air quality analysis. The emissions increases from the project must not cause or contribute to a violation of any national ambient air quality standard or PSD increment and must not adversely impact an air quality-related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

33.8(3) Content of notice or permit application. In the notice or permit application sent to the department, the owner or operator must include, at a minimum, the information listed in paragraphs 33.8(3)"a" through "g."

a. A description of the project.

b. The potential emissions increases and decreases of any pollutant regulated under the Act.

c. The projected emissions increases and decreases that will result from the project, using the methodology in subrule 33.3(2) (for PSD-subject projects) or subrule 33.4(2) (for projects in nonattainment areas).

d. A copy of the environmentally beneficial analysis required by paragraph 33.8(2)"a."

e. A description of monitoring and record keeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial. Methods should be sufficient to meet the requirements in rules 567—22.100(455B) through 567—22.116(455B).

f. A certification that the project will be designed and operated (1) in a manner that is consistent with proper industry and engineering practices; (2) in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by paragraphs 33.8(2)"a" and "b," as submitted in the notice or permit application; and (3) in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

g. Demonstration that the PCP will not have an adverse air quality impact, e.g., modeling, screening level modeling results, or a statement that the collateral emissions increase is included within the parameters used in the most recent modeling exercise, in accordance with paragraph 33.8(2)"b." An air quality impact analysis is not required for any pollutant that will not experience a significant emissions increase as a result of the project.

33.8(4) Notice process for listed projects. For projects listed under the "pollution control project" definition in rule 567—33.2(455B), the owner or operator may begin actual construction of the project immediately after notice is sent to the department. The owner or operator shall respond to any requests by the department for additional information that the department determines is necessary to evaluate the suitability of the project for the PCP exclusion.

33.8(5) Permit process for unlisted projects. Before an owner or operator may begin actual construction of a PCP project that is not listed under the definition of "pollution control project" in rule 567—33.2(455B), the project must be approved by the department and recorded in a SIP-approved permit or Title V permit. The department shall provide the public with notice of the proposed approval, with access to the environmentally beneficial analysis and the air quality analysis, and provide at least a 30-day period for the public and the Administrator to submit comments. Before taking final action on the permit, the department shall address all material comments received by the end of the comment period.

33.8(6) Operational requirements. Upon installation of the PCP, the owner or operator must comply with the requirements of paragraphs 33.8(6)"a" through "d."

a. General duty. The owner or operator must operate the PCP (1) in a manner that is consistent with proper industry and engineering practices; (2) in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by paragraphs 33.8(2)"a" and "b," as submitted in the notice or permit application required by subrule 33.8(3); and (3) in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

b. Record keeping. The owner or operator must maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emissions records to prove that the PCP is operated consistent with the general duty requirements in paragraph 33.8(6)"a."

c. Permit requirements. The owner or operator must comply with any provisions in the SIP-approved permit or Title V permit related to use and approval of the PCP exclusion.

d. Generation of emissions reduction credits. Emissions reductions created by a PCP shall not be included in calculating a significant net emissions increase, or be used for generating offsets in nonattainment areas, unless the emissions unit further reduces emissions after qualifying for the PCP exclusion, e.g., taking an operational restriction on the hours of operation. The owner or operator may generate a credit for the difference between the level of reduction which was used to qualify for the PCP exclusion and the new emissions limitation if such reductions are surplus, quantifiable, and per-

manent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

567—33.9(455B) Plantwide applicability limitations (PALs). This rule provides an existing major source the option of establishing a plantwide applicability limitation (PAL) on emissions, provided the conditions in this rule are met. Except as otherwise specified, the PAL requirements apply to both PSD programs and standards and to nonattainment area programs and standards. For purposes of rule 567—33.9(455B), the term "BACT/LAER" shall mean "BACT or LAER" for purposes of PSD permitting and standards and shall mean "LAER" for purposes of nonattainment area permitting and standards. The term "PAL" shall mean "actuals PAL" throughout this rule.

33.9(1) Definitions. For purposes of rule 567—33.9(455B), the terms in paragraphs 33.9(1)"a" through "k" shall have the meaning given in this subrule. When a term is not defined in this subrule, it shall have the meaning given in rule 567—33.2(455B) or in the Act.

a. "Actuals PAL" for a major stationary source means a PAL based on the "baseline actual emissions," as defined in rule 567—33.2(455B), of all "emissions units," as defined in rule 567—33.2(455B), at the source that emit or have the potential to emit the PAL pollutant.

b. "Allowable emissions" means "allowable emissions," as defined in rule 567—33.2(455B), except as that definition is modified according to subparagraphs 33.9(1)"b"(1) and (2).

(1) The allowable emissions for any emissions unit shall be calculated considering any emissions limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(2) An emissions unit's potential to emit shall be determined using the definition of "potential to emit" in rule 567—33.2(455B), except that the words "or enforceable as a practical matter" should be added after "federally enforceable."

c. "Small emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount less than the significant level for that PAL pollutant, as found in paragraph 33.3(1)"e" (for PSD-subject sources), paragraph 33.4(1)"e" (for sources in a nonattainment area), or in the Act, whichever is lower.

d. "Major emissions unit" means:

(1) Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

(2) Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Act for nonattainment areas. For example, in accordance with the definition of "major stationary source" in Section 182(c) of the Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

e. "Plantwide applicability limitation," or "PAL" means an emissions limitation expressed in tons per year, for a pollutant at a major stationary source that is enforceable as a practical matter and established sourcewide, in accordance with this rule.

f. "PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date on which any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

g. "PAL effective period" means the period beginning with the PAL effective date and ending ten years later.

h. "PAL major modification" means, notwithstanding the definitions for "major modification" and "net emissions increase" in subrule 33.3(1) (for PSD-subject sources) and subrule 33.4(1) (for sources in a nonattainment area), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

i. "PAL permit" means the major NSR permit, the minor NSR permit, the state voluntary operating permit, any other operating permit under a program approved into the SIP, or the Title V permit issued by the department that establishes a PAL for a major stationary source.

j. "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

k. "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level for that pollutant, as found in paragraph 33.3(1)"e" (for PSD-subject sources), paragraph 33.4(1)"e" (for sources in a nonattainment area), or in the Act, whichever is lower, but less than the amount that would qualify the unit as a "major emissions unit" as defined in paragraph 33.9(1)"d."

33.9(2) Applicability.

a. The department may approve the use of a PAL for any existing major stationary source if the PAL meets the requirements in this rule.

b. The department shall not allow a PAL for VOC or NO_x for any major stationary source located in an extreme ozone nonattainment area.

c. Any physical change in or change in the method of operation of a major stationary source that maintains its total sourcewide emissions below the PAL level, meets the requirements in this rule, and complies with the PAL permit:

(1) Is not a major modification for the PAL pollutant;

(2) Does not have to be approved through the SIP's major NSR program for PSD or nonattainment areas; and

(3) Is not subject to the provisions in paragraph 33.3(18)"b" or 33.4(4)"b," which are restrictions on relaxing enforceable emissions limitations that the major stationary source used to avoid applicability of the major NSR program.

d. Except as provided under subparagraph 33.9(2)"c"(3), a major stationary source shall continue to comply with all applicable federal or state requirements, emissions limitations, and work practice requirements that were established prior to the effective date of the PAL.

33.9(3) Permit application requirements. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the department for approval.

a. A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, applicable federal or state requirements, emissions limitations, or work practices apply to each unit.

b. Calculations of the baseline actual emissions, with supporting documentation. Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

c. The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emis-

sions based on a 12-month rolling total for each month as required by paragraph 33.9(13)"a."

33.9(4) General requirements for establishing PALs.

a. The department may allow a PAL at a major stationary source, provided that, at a minimum, the requirements in subparagraphs 33.9(4)"a"(1) through (7) are met.

(1) The PAL shall impose an annual emissions limitation in tons per year that is enforceable as a practical matter for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL, a 12-month average, rolled monthly. For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the 11 preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(2) The PAL shall be established in a PAL permit that meets the public participation requirements in subrule 33.9(5).

(3) The PAL permit shall contain all the information required by subrule 33.9(7).

(4) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(5) Each PAL shall regulate emissions of only one pollutant.

(6) Each PAL shall have a PAL effective period of ten years.

(7) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in subrules 33.9(12) through 33.9(14) for each emissions unit under the PAL throughout the PAL effective period.

b. At no time during or after the PAL effective period are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under subrule 33.4(3) unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

33.9(5) Public participation requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or increased, through a procedure that is consistent with 40 CFR §51.160, as amended through August 12, 1996, and 51.161, as amended through November 7, 1986. The department shall provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. Before taking final action on the permit, the department shall address all material comments received by the end of the comment period.

33.9(6) Setting the ten-year PAL level.

a. Except as provided in paragraph 33.9(6)"b," the PAL level for a major stationary source shall be established as the sum of the "baseline actual emissions," as defined in rule 567—33.2(455B), of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant as found in paragraph 33.3(1)"e" (for PSD-subject sources), paragraph 33.4(1)"e" (for sources in a nonattainment area), or in the Act, whichever is lower. When establishing the PAL level for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The department shall specify in the PAL permit a reduced PAL level(s) (in tons/yr) that will become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) for which the department is aware prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half, e.g., from baseline emissions of 60 ppm NO_X to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

b. For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in paragraph 33.9(6)"a," the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

33.9(7) Contents of the PAL permit. The PAL permit shall contain, at a minimum, the information in paragraphs 33.9(7)"a" through "j."

a. The PAL pollutant and the applicable sourcewide emissions limitation in tons per year.

b. The PAL permit effective date and the expiration date of the PAL (i.e., PAL effective period).

c. Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with subrule 33.9(10) before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the department.

d. A requirement that emissions calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

e. A requirement that, once the PAL expires, the major stationary source is subject to the requirements of subrule 33.9(9).

f. The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by paragraph 33.9(13)"a."

g. A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under subrule 33.9(12).

h. A requirement that the records required under subrule 33.9(13) be retained on site. Such records may be retained in an electronic format.

i. A requirement that the reports required under subrule 33.9(14) be submitted by the required deadlines.

j. Any other requirements that the department deems necessary to implement and enforce the PAL.

33.9(8) PAL effective period and reopening of the PAL permit.

a. PAL effective period. The department shall specify a PAL effective period of ten years.

b. Reopening of the PAL permit.

(1) During the PAL effective period, the department shall reopen the PAL permit to:

1. Correct typographical/calculation errors made in setting the PAL or to reflect a more accurate determination of emissions used to establish the PAL;

2. Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under subrule 33.4(3); or

3. Revise the PAL to reflect an increase in the PAL as provided under subrule 33.9(11).

(2) The department may reopen the PAL permit to:

1. Reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

2. Reduce the PAL consistent with any other requirement that is enforceable as a practical matter and that the state may impose on the major stationary source; or

3. Reduce the PAL if the department determines that a reduction is necessary to avoid causing or contributing to a national ambient air quality standard or PSD increment violation, or to avoid causing or contributing to an adverse impact on an air quality-related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(3) Except for the permit reopening for the correction of typographical/calculation errors that do not increase the PAL level, all reopenings shall be carried out in accordance with the public participation requirements of subrule 33.9(5).

33.9(9) Expiration of a PAL. Any PAL that is not renewed in accordance with the procedures in 33.9(10) shall expire at the end of the PAL effective period, and the requirements in paragraphs 33.9(9)"a" through "e" shall apply.

a. Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emissions limitation under a revised permit established according to the procedures in subparagraphs 33.9(9)"a"(1) and (2).

(1) Within the time frame specified for PAL renewals in paragraph 33.9(10)"b," the major stationary source shall submit a proposed allowable emissions limitation for each emissions unit, or each group of emissions units, if such a distribution is more appropriate as decided by the department, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under paragraph 33.9(10)"e," such distribution shall be made as if the PAL had been adjusted.

(2) The department shall decide whether and how the PAL allowable emissions will be distributed and shall issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

b. Each emissions unit(s) shall comply with the allowable emissions limitation on a 12-month rolling basis. The department may approve the use of monitoring systems (source testing, emissions factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emissions limitation.

c. Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subparagraph 33.9(9)"a"(2), the source shall continue to comply with a sourcewide, multiunit emissions cap equivalent to the level of the PAL emissions limitation.

d. Any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements for PSD or nonattainment areas if such change meets the definition of "major modification" in subrule 33.3(1) or subrule 33.4(1).

e. The major stationary source owner or operator shall continue to comply with any applicable state or federal requirements (BACT/LAER, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emissions limitations that had been established pursuant to paragraph 33.3(18)"b" (for PSD-subject sources) or paragraph 33.4(4)"b" (for sources in a nonattainment area), but were eliminated by the PAL in accordance with the provisions in subparagraph 33.9(2)"c"(3).

33.9(10) Renewal of a PAL.

a. The department shall follow the procedures specified in subrule 33.9(5) in approving any request to renew a PAL for a major stationary source and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the department.

b. Application deadline. A major stationary source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months prior to, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

c. Application requirements. The application to renew a PAL permit shall contain the information required in subparagraphs 33.9(10)"c"(1) through (4).

(1) The information required in paragraphs 33.9(3)"a" through "c."

(2) A proposed PAL level.

(3) The sum of the potential to emit of all emissions units under the PAL, with supporting documentation.

(4) Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

d. PAL adjustment. In determining whether and how to adjust the PAL, the department shall consider the options outlined in subparagraphs 33.9(10)"d"(1) and (2). However, in no case may any such adjustment fail to comply with subparagraph 33.9(10)"d"(3).

(1) If the emissions level calculated in accordance with subrule 33.9(6) is equal to or greater than 80 percent of the PAL level, the department may renew the PAL at the same level without considering the factors set forth in subparagraph 33.9(10)"d"(2); or

(2) The department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the department in its written rationale.

(3) Notwithstanding subparagraphs 33.9(10)"d"(1) and (2):

1. If the potential to emit of the major stationary source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and

2. The department shall not approve a renewed PAL level higher than the current PAL level, unless the major station-

ary source has complied with the provisions of subrule 33.9(11) (increasing a PAL).

e. If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period and if the department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or Title V permit renewal, whichever occurs first.

33.9(11) Increasing a PAL during the PAL effective period.

a. The department may increase a PAL only if the major stationary source complies with the provisions in subparagraphs 33.9(11)"a"(1) through (4).

(1) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed the PAL.

(2) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s), exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(3) The owner or operator shall obtain a major NSR permit for all emissions units identified in subparagraph 33.9(11)"a"(1), regardless of the magnitude of the emissions increase resulting from them, i.e., no significant levels apply. These emissions units shall comply with any emissions requirements resulting from the major NSR process, for example, BACT/LAER, even though they have also become subject to the PAL or continue to be subject to the PAL.

(4) The PAL permit shall require that the increased PAL level become effective on the day on which any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

b. The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units, assuming application of BACT equivalent controls as determined in accordance with subparagraph 33.9(11)"a"(2), plus the sum of the baseline actual emissions of the small emissions units.

c. The PAL permit shall be revised to reflect the increased PAL level in accordance with the public notice requirements of subrule 33.9(5).

33.9(12) Monitoring requirements for PALs.

a. General requirements.

(1) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(2) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in paragraph 33.9(12)"b" and must be approved by the department.

(3) Notwithstanding subparagraph 33.9(12)"a"(2), the owner or operator may also employ an alternative monitoring approach that meets the requirements of subparagraph 33.9(12)"a"(1), if the monitoring approach is approved by the department.

(4) Failure to use a monitoring system that meets the requirements of this subrule renders the PAL invalid.

b. Minimum performance requirements for approved monitoring approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in paragraphs 33.9(12)"c" through "i."

(1) Mass balance calculations for activities using coatings or solvents;

(2) CEMS;

(3) CPMS or PEMS; and

(4) Emissions factors.

c. Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coatings or solvents shall meet the following requirements:

(1) The owner or operator must provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(2) The owner or operator must assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(3) Where the vendor of a material or fuel that is used in or at the emissions unit publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

d. CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(1) CEMS must comply with applicable performance specifications found in 40 CFR Part 60, Appendix B, as amended through January 12, 2004; and

(2) CEMS must sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.

e. CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(1) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(2) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

f. Emissions factors. An owner or operator using emissions factors to monitor PAL pollutant emissions shall meet the following requirements:

(1) All emissions factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(2) The emissions unit shall operate within the designated range of use for the emissions factor, if applicable; and

(3) If technically practicable, the owner or operator of a significant emissions unit that relies on an emissions factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emissions factor within six months of PAL permit issuance, unless the department determines that testing is not required.

g. A source owner or operator must record and report maximum potential emissions without considering enforceable emissions limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

h. Notwithstanding the requirements in paragraphs 33.9(12)"c" through "g," where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:

(1) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(2) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

i. Revalidation. All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. Such testing must occur at least once every five years after issuance of the PAL.

33.9(13) Record-keeping requirements.

a. The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement in this rule and the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

b. The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five years:

(1) A copy of the PAL permit application and any applications for revisions to the PAL; and

(2) Each annual certification of compliance pursuant to Title V and the data relied on in certifying the compliance.

33.9(14) Reporting and notification requirements. The owner or operator shall submit semiannual monitoring reports and deviation reports to the department promptly in accordance with the applicable Title V operating permit program. The reports shall meet the requirements in paragraphs 33.9(14)"a" through "c."

a. Semiannual report. The semiannual report shall be submitted to the department within 30 days of the end of each reporting period. This report shall contain the information required in subparagraphs 33.9(14)"a"(1) through (7).

(1) The identification of owner and operator and the permit number.

(2) Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to paragraph 33.9(13)"a."

(3) All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

(4) A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

(5) The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero and span calibration checks, and any corrective action taken.

(6) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or will be replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by the method included in the permit, as provided by paragraph 33.9(12)"g."

(7) A signed statement by the responsible official, as defined by the applicable Title V operating permit program, certifying the truth, accuracy, and completeness of the information provided in the report.

b. Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviation from or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 567—subrule 22.108(5) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 567—subrule 22.108(5). The reports shall contain the following information

(1) The identification of owner and operator and the permit number;

(2) The PAL requirement from which there was a deviation or that was exceeded;

(3) Emissions resulting from the deviation or exceedance; and

(4) A signed statement by the responsible official, as defined by the applicable Title V operating permit program, certifying the truth, accuracy, and completeness of the information provided in the report.

c. Revalidation results. The owner or operator shall submit to the department the results of any revalidation test or method within three months after completion of such test or method.

33.9(15) Transition requirements.

a. The department may not issue a PAL that does not comply with the requirements in this rule after the Administrator has approved regulations incorporating these requirements into Iowa's SIP.

b. The department may supersede any PAL that was established prior to the date of approval of the Iowa SIP by the Administrator with a PAL that complies with the requirements of this rule.

These rules are intended to implement Iowa Code chapter 455B.

ARC 4003B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455B.133(2), the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 53, "Protected Water Sources—Purposes—Designation Procedures—Information in Withdrawal Applications—Limitations—List of Protected Sources," Iowa Administrative Code.

The rules in Chapter 53 describe the purpose and procedures for designating specific surface water and groundwater sources as protected sources, and include the special information that may be required of applicants for permits to withdraw water from such sources and the conditions that may be applied to approved permits. Protected sources designated by rule are also listed. This amendment adds a protected source to the list.

Any interested person may make written suggestions or comments on this proposed amendment on or before March 17, 2005. Such written materials should be directed to Bob Drustrup, Iowa Geological Survey and Land Quality, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-8895, or by electronic mail to bob.drustrup@dnr.state.ia.us.

Also, there will be a pubic hearing at 7 p.m. on Thursday, March 10, 2005, in Garner Hall located at 313 9th Avenue in Camanche, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any person who intends to attend the public hearing and has special requirements such as those related to hearing or mobility impairments should contact Bob Drustrup at (515) 281-8900.

This amendment is intended to implement Iowa Code section 455B.133(2).

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule 567—53.7(455B) by adopting the following **new** subrule:

53.7(2) Chemplex site, Clinton County. The purpose of this protected water source designation is to preserve public health and welfare and to minimize movement of contaminants from the Chemplex site. Previous activities involving the manufacturing of polyethylene in the northern portion of the protected water source area resulted in contamination of groundwater with volatile organic compounds.

The following portion of Township 81 North, Range 6 East in Clinton County is a protected water source: the southeastern quarter of Section 19; the southwestern quarter of Section 20 that is west of the unnamed tributary; the area in Section 28 west of a line from the northwestern corner to a point south 1,100 feet and east 1,000 feet then to a point 700 feet north of the southwestern corner; Section 29 less the area east of a line from 700 feet north to 500 feet west of the southeastern corner; the eastern half of Section 30; the northern half of the northeastern quarter of Section 31; and the northern half of the northern half of Section 32 less the area east of a line from 500 feet west of the northeastern corner to a point 2,000 feet west and 1,320 feet south of the southeastern corner. Any new application for a permit to withdraw groundwater, except for the purpose of controlling groundwater contamination, from above the Maquoketa shale formation, the top of which is approximately 400 feet above mean sea level, in this protected source area shall be denied by the department. Any new permit to withdraw groundwater from below the Maquoketa shale formation shall be conditioned on casing and sealing of the well from the surface through the Maquoketa shale.

The Clinton County health department shall also deny any application for a construction permit for an otherwise nonregulated well (definition in rule 567—50.2(455B)) within the protected water source area, unless an adequate alternative supply of water (e.g., municipal water supply) is not reasonably available. The Clinton County health department shall consult with the department prior to approving or denying a construction permit in a situation in which an adequate alternative supply of water is not or may not be reasonably available. The department shall make the determination on whether to approve or deny such a permit.

ARC 4004B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Amended Notice of Intended Action

Pursuant to the authority of Iowa Code section 459.103, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 65, "Animal Feeding Operations," Iowa Administrative Code.

Notice of Intended Action was published in the November 10, 2004, Iowa Administrative Bulletin as **ARC 3807B** to address a concern that persons required to maintain manure management plan records would be held responsible for excessive commercial nitrogen or phosphorus applied to land that they do not own or rent for crop production purposes. After receiving comments from interested persons, the Commission proposed to modify the paragraph further by adding a sentence to indicate that the producer responsible for the manure management plan must obtain a statement from the person who owns or rents the land which specifies the planned rates of commercial nitrogen and phosphorus to be added to each field receiving manure.

Any interested person may make written suggestions or comments on the proposed amendment on or before March 8, 2005. Written comments should be directed to Gene Tinker, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895.

Also, there will be a public hearing on March 8, 2005, at 1 p.m. in the Fourth Floor East Conference Room of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons

will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

Any persons who intend to attend the public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

This amendment is intended to implement Iowa Code section 459.312.

The following amendment is proposed.

Amend paragraph **65.17(13)"e"** as follows:

e. Effective August 25, 2005, date(s) and application rate*(s)* of commercial nitrogen and phosphorus on fields that received manure. *However, if the date and application rate information is for fields which are not owned for crop production or which are not rented or leased for crop production by the person required to keep records pursuant to this subrule, an enforcement action for noncompliance with a manure management plan or the requirements of this subrule shall not be pursued against the person required to keep records pursuant to this subrule or against any other person who relied on the date and application rate in records required to be kept pursuant to this subrule, unless that person knew or should have known that nitrogen or phosphorus would be applied in excess of maximum levels set forth in paragraph 65.17(1)"a." If manure is applied to fields not owned, rented or leased for crop production by the person required to keep records pursuant to this subrule, that person shall obtain from the person who owns, rents or leases those fields a statement specifying the planned commercial nitrogen and phosphorus fertilizer rates to be applied to each field receiving the manure.*

ARC 3985B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Mortuary Science Examiners hereby gives Notice of Intended Action to amend Chapter 100, "Practice of Funeral Directors, Funeral Establishments, and Cremation Establishments"; to rescind Chapter 103, "Discipline for Funeral Directors," and adopt a new Chapter 103, "Disciplinary Proceedings"; to renumber Chapter 104, "Fees," as Chapter 105; and to adopt a new Chapter 104, "Enforcement Proceedings Against Nonlicensees," Iowa Administrative Code.

These proposed amendments add a statement to require written permission from an authorized person for anyone other than the funeral director, intern, immediate family member or student to be in the preparation room; delete the statement regarding the transit permit from 100.10(6)"a"; propose a new discipline chapter and a new chapter regarding enforcement proceedings against nonlicensees.

Any interested person may make written comments on the proposed amendments no later than March 8, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, E-mail pwilson@idph.state.ia.us.

A public hearing will be held on March 8, 2005, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 156 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **100.6(1)**, paragraph **"c,"** as follows:

c. Embalming shall be done entirely in private. No one except the funeral director, intern, ~~or~~ immediate family, *or student* shall be allowed in the preparation room ~~during the embalming~~ *without the written permission of the authorized person*. A student~~,~~ *must be under the direct physical supervision of the funeral director and* currently enrolled *and attending* ~~at~~ a ~~school~~ *program* of mortuary science which is recognized by the board~~, shall~~ *to* be allowed in the preparation room during the embalming ~~if under the direct physical supervision of the funeral director~~ *without written permission*.

ITEM 2. Amend subrule **100.10(6)**, paragraph **"a,"** as follows:

a. Cremated remains may be disposed of by placing them in a grave, crypt, or niche; by scattering them in a scattering area as defined in these rules; or they may remain in the personal care and custody of the authorized person. ~~If the cremated remains are given to the authorized person or the authorized person's designee, a burial transit permit shall be attached to the temporary cremation container or urn. In the event that the cremated remains are placed in a grave, crypt, niche or scattered in a scattering area, it is the responsibility of the authorized person or the authorized person's designee to forward the burial transit permit to the state or the funeral director who arranged the cremation services so the death certificate can be amended and accurately reflect the place of final disposition.~~ After supervising the final disposition of the cremated remains, the funeral director shall be discharged.

ITEM 3. Rescind 645—Chapter 103 and adopt the following **new** chapter in lieu thereof:

CHAPTER 103
DISCIPLINARY PROCEEDINGS

645—103.1(156) Definitions.

"Board" means the board of mortuary science examiners.

"Discipline" means any sanction the board may impose upon licensees.

"Licensee" means an individual licensed pursuant to Iowa Code section 156.4 to practice as a funeral director in Iowa and a person issued an establishment license pursuant to Iowa Code section 156.14 to establish, conduct, or maintain a funeral establishment or cremation establishment in Iowa.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

645—103.2(17A,147,156,272C) Disciplinary authority. The board is empowered to administer Iowa Code chapters 17A, 147, 156, and 272C and related administrative rules for the protection and well-being of those persons who may rely upon licensed individuals and establishments for the performance of mortuary science services within this state or for clients in this state. To perform these functions, the board is broadly vested with authority to review and investigate alleged acts or omissions of licensees, to determine whether disciplinary proceedings are warranted, to initiate and prosecute disciplinary proceedings, to establish standards of professional conduct, and to impose discipline pursuant to Iowa Code sections 17A.13, 147.55, 272C.3 to 272C.6 and 272C.10 and Iowa Code chapter 156.

645—103.3(17A,147,156,272C) Grounds for discipline against funeral directors. The board may initiate disciplinary action against a licensed funeral director based on any of the following grounds:

103.3(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

a. False representation of a material fact, whether by word or by conduct, by false or misleading allegation, or by concealment of that which should have been disclosed when making application for a license in this state, or

b. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

103.3(2) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.

d. Failure to conform to the minimal standards of acceptable and prevailing practice of a funeral director in this state.

103.3(3) Deceptive practices. Deceptive practices are grounds for discipline, whether or not actual injury is established, and include:

a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of mortuary science.

b. Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

c. Acceptance of any fee by fraud or misrepresentation.

d. Falsification of business records through false or deceptive representations or omissions.

e. Submission of false or misleading reports or information to the board including information supplied in an audit of continuing education, reports submitted as a condition of probation, or any reports identified in this rule.

f. Knowingly misrepresenting any material matter to a prospective purchaser of funeral merchandise, furnishings, or services.

g. Representing oneself as a funeral director when one's license has been suspended, revoked, or surrendered, or when one's license is lapsed or has been placed on inactive status.

h. Permitting another person to use the licensee's license for any purposes.

i. Misrepresenting the legal need or other requirement for embalming.

j. Fraud in representations as to skill or ability.

103.3(4) Unethical, harmful or detrimental conduct. Licensees engaging in unethical conduct or practices harmful or detrimental to the public may be disciplined whether or not injury is established. Behaviors and conduct which are unethical, harmful or detrimental to the public may include, but are not limited to, the following actions:

a. Practice outside the scope of the profession which requires licensure by a different professional licensing board.

b. Any violation of Iowa Code section 144.32.

c. Verbal or physical abuse, improper sexual contact, or making suggestive, lewd, lascivious, offensive or improper remarks or advances, if such behavior occurs within the practice of mortuary science or such behavior otherwise provides a reasonable basis for the board to conclude that such behavior would place the public at risk within the practice of mortuary science.

d. Betrayal of a professional confidence.

e. Engaging in a professional conflict of interest.

f. Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

g. Embalming or attempting to embalm a deceased human body without first having obtained authorization from a family member or representative of the deceased, except where embalming is done to meet the requirements of applicable state or local law. However, a funeral director may embalm without authority when, after due diligence, no authorized person can be contacted and embalming is in accordance with legal or accepted standards in the community, or the licensee has good reason to believe that the family wishes embalming. The order of priority for those persons authorized to permit embalming is found in Iowa Code section 142A.2(2). If embalming is performed under these circumstances, the licensee shall not be deemed to be in violation of the prohibition in this paragraph.

h. Failure to keep and maintain records as required by Iowa Code chapter 156 and associated rules.

103.3(5) Unlicensed practice.

a. Practicing mortuary science when one's license has been suspended, revoked, or surrendered, or when one's license is lapsed or has been placed on inactive status.

b. Practicing mortuary science within an unlicensed funeral or cremation establishment.

c. Permitting an unlicensed employee or other person under the licensee's control or supervision to perform activities requiring a license.

d. Knowingly aiding, assisting, procuring, advising, or allowing a person to unlawfully practice mortuary science, or aiding or abetting a licensee, license applicant or unlicensed person in committing any act or omission which is grounds for discipline under this rule or is an unlawful act by a nonlicensee under Iowa Code section 156.16.

103.3(6) Lack of proper qualifications.

a. Continuing to practice as a funeral director without satisfying the continuing education mandated by 645—Chapter 102.

b. Acting as a preceptor or continuing education provider without proper board approval or qualification.

c. Habitual intoxication or addiction to the use of drugs, or impairment which adversely affects the licensee's ability to practice in a safe and competent manner.

d. Any act, conduct, or condition, including lack of education or experience and careless or intentional acts or omissions, that demonstrates a lack of qualifications which are necessary to ensure a high standard of professional care as provided in Iowa Code section 272C.3(2)"b."

103.3(7) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes:

a. A failure to exercise due care including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results.

b. Any conduct, practice or condition which impairs a licensee's ability to safely and skillfully practice the profession.

103.3(8) Professional misconduct.

a. Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

b. Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of mortuary science, including, but not limited to, Iowa Code chapters 272C, 144, 147, 156, 523A, 523I, 566, and 566A; board rules, including rules of professional conduct set forth in 645—Chapter 100; and regulations promulgated by the Federal Trade Commission relating to funeral services or merchandise, or funeral or cremation establishments, as applicable to the profession. Any violation involving deception, dishonesty or moral turpitude shall be deemed related to the practice of mortuary science.

c. Engaging in any conduct that subverts or attempts to subvert a board investigation, or failure to fully cooperate with a licensee disciplinary investigation or investigation against a nonlicensee, including failure to comply with a subpoena issued by the board or to respond to a board inquiry within 30 calendar days of the date of mailing by certified mail of a written communication directed to the licensee's last address on file at the board office.

d. Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, discipline by the board based solely on such action shall be vacated.

103.3(9) Willful or repeated violations. The willful or repeated violation of any provision of Iowa Code chapter 147, 156, or 272C.

103.3(10) Failure to report.

a. Failure by a licensee or an applicant for licensure to report, in writing to the board any revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action.

b. Failure of a licensee or an applicant for licensure to report, within 30 days of the action, any voluntary surrender of a professional license to resolve a pending disciplinary investigation or action.

c. Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

d. Failure to notify the board within 30 days after occurrence of any judgment or settlement of malpractice claim or action.

e. Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

f. Failure to report a change of name or address within 30 days after it occurs.

103.3(11) Failure to comply with board order.

a. Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order, or other decision of the board imposing discipline.

b. Failure to pay costs assessed in any disciplinary action.

103.3(12) Conviction of a felony. Conviction of a felony related to the practice of mortuary science or the conviction of any felony that would affect the licensee's ability to practice mortuary science. A copy of the record of conviction or plea of guilty shall be conclusive evidence. "Conviction" shall include any plea of guilty, including Alford pleas, or finding of guilt whether or not judgment or sentence is deferred. Any felony involving deception, dishonesty or moral turpitude shall be deemed related to the practice of mortuary science. "Moral turpitude" includes any act which is so contrary to justice or good morals or is so reprehensible as to undermine the public confidence and trust imposed upon the licensee as a funeral director in this state.

645—103.4(17A,147,156,272C) Grounds for discipline against funeral establishments and cremation establishments. The board may initiate disciplinary action against a funeral establishment or cremation establishment, at time of license application or thereafter, based on all grounds set forth in Iowa Code section 156.15, summarized as follows:

103.4(1) The licensee or applicant has been convicted of a felony or a misdemeanor involving moral turpitude, or if the applicant is an association, joint stock company, partnership, corporation, or other business entity, a managing officer has been convicted of a felony or misdemeanor involving moral turpitude under the laws of this state, another state, or the United States.

103.4(2) The licensee or applicant, or any owner or employee of the establishment, has violated Iowa Code chapter 156, rule 645—103.3(17A,147,156,272C), or any other rule promulgated by the board.

103.4(3) The licensee or applicant knowingly aided, assisted, procured, or allowed a person to unlawfully practice mortuary science.

103.4(4) The licensee or applicant failed to engage in or ceased to engage in the business described in the application for licensure.

103.4(5) The licensee or applicant failed to keep and maintain records as required by Iowa Code chapter 156 or rules promulgated by the board.

645—103.5(17A,147,156,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revoke a license.
2. Suspend a license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period, the licensee's engaging in specified procedures, methods, or acts.
4. Place a licensee on probation and impose such conditions as the board may reasonably impose including, but not limited to, requiring periodic reporting to the board designated features of the licensee's practice of mortuary science.
5. Require additional education or training. The board may specify that a designated amount of continuing educa-

tion be taken in specific subjects and may specify the time period for completing these courses. The board may also specify whether that continuing education be in addition to the continuing education routinely required for license renewal. The board may also specify that additional continuing education be a condition for the termination of any suspension or reinstatement of a license.

6. Require a reexamination.

7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.

8. Impose civil penalties not to exceed $1,000 against an individual licensed as a funeral director, or not to exceed $10,000 against a licensed funeral establishment or cremation establishment. Civil penalties may be imposed for any of the disciplinary violations specified in 645—103.3(17A,147,156,272C) and 103.4(17A,147,156,272C), as applicable.

9. Issue a citation and warning, or reprimand.

10. Refuse to issue or renew a license.

11. Such other sanctions allowed by law as may be appropriate.

645—103.6(17A,147,156,272C) Board discretion in imposing disciplinary sanctions. Factors the board will consider when determining the nature and severity of the disciplinary sanction to be imposed, including whether to assess and the amount of civil penalties, include:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state.

2. Whether the amount of a civil penalty will be a substantial deterrent to the violation.

3. The circumstances leading to the violation.

4. The risk of harm to the public.

5. The economic benefits gained by the licensee as a result of the violation.

6. The interest of the public.

7. Evidence of reform or remedial action.

8. Time lapsed since the violation occurred.

9. Whether the violation is a repeat offense following a prior cautionary letter, disciplinary order, or other notice of the nature of the infraction.

10. The clarity of the issues involved.

11. Whether the violation was willful and intentional.

12. Whether the nonlicensee acted in bad faith.

13. The extent to which the licensee cooperated with the board.

14. Whether a licensee holding a lapsed, inactive, suspended, restricted or revoked license engaged in practices which require licensure.

15. Any extenuating factors or other countervailing considerations.

16. Number and seriousness of prior violations or complaints.

17. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

These rules are intended to implement Iowa Code chapters 17A, 147, 156, and 272C.

ITEM 4. Renumber **645—Chapter 104** as **645—Chapter 105** and adopt the following **new** chapter:

CHAPTER 104
ENFORCEMENT PROCEEDINGS AGAINST NONLICENSEES

645—104.1(156) Civil penalties against nonlicensees. The board may impose civil penalties by order against a person who is not licensed by the board based on the unlawful practices specified in Iowa Code section 156.16. In addition to the procedures set forth in Iowa Code section 156.16, this chapter shall apply.

645—104.2(156) Unlawful practices. Practices by unlicensed persons or establishments which are subject to civil penalties include, but are not limited to:

1. Acts or practices by unlicensed persons which require licensure as a funeral director under Iowa Code chapter 156.

2. Acts or practices by unlicensed establishments which require licensure as a funeral establishment or cremation establishment under Iowa Code chapter 156.

3. Use of the words "funeral director," "mortician," or other title in a manner which states or implies that the person is engaged in the practice of mortuary science as defined in Iowa Code chapter 156.

4. Use or attempted use of a licensee's certificate or an expired, suspended, revoked, or nonexistent certificate.

5. Falsely impersonating a licensed funeral director.

6. Providing false or forged evidence of any kind to the board in obtaining or attempting to obtain a license.

7. Other violations of Iowa Code chapter 156.

8. Knowingly aiding or abetting an unlicensed person or establishment in any activity identified in this rule.

645—104.3(156) Investigations. The board is authorized by Iowa Code sections 17A.13(1) and 156.16 to conduct such investigations as are needed to determine whether grounds exist to impose civil penalties against a nonlicensee. Such investigations shall conform to the procedures outlined in this chapter. Complaint and investigatory files concerning nonlicensees are not confidential except as may be provided in Iowa Code chapter 22.

645—104.4(156) Subpoenas. Pursuant to Iowa Code sections 17A.13(1) and 156.16, the board is authorized in connection with an investigation of an unlicensed person or establishment to issue subpoenas to compel persons to testify and to compel persons to produce books, papers, records and any other real evidence, whether or not privileged or confidential under law, which the board deems necessary as evidence in connection with the civil penalty proceeding or relevant to the decision of whether to initiate a civil penalty proceeding. Board procedures concerning investigative subpoenas are set forth in 645 IAC 9.5(17A,272C).

645—104.5(156) Notice of intent to impose civil penalties. The notice of the board's intent to issue an order to require compliance with Iowa Code chapter 156 and to impose a civil penalty shall be served upon the nonlicensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa R. Civ. P. 1.305. Alternatively, the nonlicensee may accept service personally or through authorized counsel. The notice shall include the following:

1. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.

2. Reference to the particular sections of the statutes and rules involved.

3. A short, plain statement of the alleged unlawful practices.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

4. The dollar amount of the proposed civil penalty and the nature of the intended order to require compliance with Iowa Code chapter 156.

5. Notice of the nonlicensee's right to a hearing and the time frame in which hearing must be requested.

6. The address to which written request for hearing must be made.

645—104.6(156) Requests for hearings.

104.6(1) Nonlicensees must request a hearing within 30 days of the date the notice is received if served through restricted certified mail, or within 30 days of the date of service if service is accepted or made in accordance with Iowa R. Civ. P. 1.305. A request for hearing must be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal service.

104.6(2) If a request for hearing is not timely made, the board chairperson or the chairperson's designee may issue an order imposing the civil penalty and requiring compliance with Iowa Code chapter 156, as described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose civil penalty.

104.6(3) If a request for hearing is timely made, the board shall issue a notice of hearing and conduct a contested case hearing in the same manner as applicable to disciplinary cases against licensees.

104.6(4) A nonlicensed person who fails to timely request a contested case hearing shall have failed to exhaust "adequate administrative remedies" as that term is used in Iowa Code section 17A.19(1).

104.6(5) A nonlicensed person who is aggrieved or adversely affected by the board's final decision following a contested case hearing may seek judicial review as provided in Iowa Code section 17A.19.

104.6(6) A nonlicensee may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty and requiring compliance with Iowa Code chapter 156 at any stage of the proceeding upon mutual consent of the board.

104.6(7) The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be published as provided in rule 645—105.6(17A,147,156,272C). Hearings shall be open to the public.

645—104.7(156) Factors to consider. The board may consider the following when determining the amount of civil penalty to impose, if any:

1. Whether the amount imposed will be a substantial economic deterrent to the violation.
2. The circumstances leading to the violation.
3. The severity of the violation and the risk of harm to the public.
4. The economic benefits gained by the violator as a result of noncompliance.
5. The interest of the public.
6. The time lapsed since the unlawful practice occurred.
7. Evidence of reform or remedial actions.
8. Whether the violation is a repeat offense following a prior warning letter or other notice of the nature of the infraction.
9. Whether the violation involved an element of deception.
10. Whether the unlawful practice violated a prior order of the board, court order, cease and desist agreement, consent order, or similar document.
11. The clarity of the issue involved.
12. Whether the violation was willful and intentional.
13. Whether the nonlicensee acted in bad faith.
14. Whether the nonlicensee cooperated with the board.

645—104.8(156) Enforcement options. In addition, or as an alternative, to the administrative process described in these rules, the board may seek an injunction in district court, refer the matter for criminal prosecution, or enter into a consent agreement as provided in Iowa Code section 156.16.

These rules are intended to implement Iowa Code chapters 17A, 147, and 156.

ARC 3986B

RACING AND GAMING COMMISSION[491]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby gives Notice of Intended Action to amend Chapter 6, "Occupational and Vendor Licensing," Chapter 9, "Harness Racing," and Chapter 10, "Thoroughbred and Quarter Horse Racing," Iowa Administrative Code.

Items 1 through 4 are amended for clarification.

Item 5 allows the Commission to license a jockey under the age of 18 who has the written consent of a parent or guardian.

Item 6 allows the Commission to license a driver under the age of 18 who has the written consent of a parent or guardian to drive in qualifying races only.

Item 7 makes a placing judge an official for harness racing.

Item 8 clarifies the sex allowance provisions related to thoroughbred racing.

Any person may make written suggestions or comments on the proposed amendments on or before March 8, 2005. Written material should be directed to the Racing and Gaming Commission, 717 E. Court, Suite B, Des Moines, Iowa 50309. Persons who wish to convey their views orally should contact the Commission office at (515)281-7352.

Also, there will be a public hearing on March 8, 2005, at 9 a.m. in the office of the Racing and Gaming Commission, 717 E. Court, Suite B, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

RACING AND GAMING COMMISSION[491](cont'd)

ITEM 1. Amend subrule **6.16(5)**, paragraph **"e,"** as follows:

e. The owner *(includes stable names, partnerships, and corporations)* and trainer of a horse must be licensed at least one hour before post time of the race in which the horse is entered. In the case of absentee owners, the trainer must submit a properly executed temporary horse owner license application on behalf of the absentee owner(s) at least one hour before post time of the race in which the horse is entered.

ITEM 2. Amend subrule 6.17(1) as follows:

6.17(1) Licensed owners and lessees wishing to race under a kennel/stable name may do so by applying for a license with the commission on forms furnished by the commission. *All kennel/stable names must be licensed with the commission on forms furnished by the commission, and in accordance with the requirements of 491—6.16(99D).*

ITEM 3. Amend subrule 6.19(1) as follows:

6.19(1) A partnership is defined as a formal or informal arrangement between two or more persons to own a racing animal. All partnerships, excluding husband and wife, must be licensed with the commission on forms furnished by the commission, *and in accordance with the requirements of 491—6.16(99D).*

ITEM 4. Amend subrule 6.20(1) as follows:

6.20(1) All corporations must be duly licensed by the commission on forms furnished by the commission, *and in accordance with the requirements of 491—6.16(99D).* In addition, any stockholder owning a beneficial interest of 5 percent or more of the corporation must be licensed as an owner. The corporation must submit a complete list of stockholders owning a beneficial interest of 5 percent or more.

ITEM 5. Rescind subrule **6.23(1)**, paragraph **"a,"** and insert in lieu thereof the following **new** paragraph:

a. An applicant for a jockey license must be at least 16 years of age, and if under 18 years of age, the applicant must have the written consent of a parent or guardian.

ITEM 6. Amend rule **491—6.25(99D)**, numbered paragraph **"3,"** as follows:

3. The age of the applicant. No person under 18 years of age shall be licensed by the commission as a driver. *However, a person under 18 years of age, but at least 16 years of age who has the written consent of a parent or guardian may be licensed to drive in qualifying races only.*

ITEM 7. Amend subrule **9.4(1)** by adding the following **new** paragraph **"i"** and relettering current paragraph **"i"** as **"j"**:

i. Placing judge;

ITEM 8. Rescind subrule **10.4(5)**, paragraph **"g,"** subparagraph **(4)**, and insert in lieu thereof the following **new** subparagraph:

(4) Sex allowances. In thoroughbred racing, sex allowances are obligatory. Sex allowances shall be applied in all thoroughbred races unless the conditions of the race expressly state to the contrary. If the conditions of the race are silent as to sex allowances, a sex allowance shall be applied. Sex allowances may not be declined. Two-year old fillies shall be allowed three pounds; mares three years old and older are allowed five pounds before September 1 and three pounds thereafter. Sex allowances are not applicable for quarter horse or mixed races.

ARC 3991B

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 529, "For-Hire Interstate Motor Carrier Authority," Iowa Administrative Code.

The Code of Federal Regulations was updated in October 2004, and the Department needs to cite the current version in these rules. No changes to the federal regulations have occurred.

Any person or agency may submit written comments concerning this proposed amendment or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address tracy.george@dot.state.ia.us.
5. Be received by the Director's Staff Division no later than March 8, 2005.

A meeting to hear requested oral presentations is scheduled for Thursday, March 10, 2005, at 10 a.m. in the DOT conference room at Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

This amendment is intended to implement Iowa Code chapter 327B.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

Proposed rule-making action:

Amend rule 761—529.1(327B) as follows:

761—529.1(327B) Motor carrier regulations. The Iowa department of transportation adopts the Code of Federal Regulations, 49 CFR Parts 365-368 and 370-379, dated October 1, ~~2003~~ *2004*, for regulating interstate for-hire carriers.

Copies of this publication are available from the state law library or through the Internet at http://www.fmcsa.dot.gov.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for February is 6.25%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants . . . . . Maximum 6.0%
74A.4 Special Assessments . . . . . Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective February 9, 2005, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days . . . . . Minimum 0.95%
32-89 days . . . . . Minimum 1.35%
90-179 days . . . . . Minimum 1.45%
180-364 days . . . . . Minimum 1.65%
One year to 397 days . . . . . Minimum 2.05%
More than 397 days . . . . . Minimum 3.25%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 3990B

UTILITIES DIVISION[199]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to Iowa Code sections 17A.4, 474.5, and 476.2 (2003), the Utilities Board (Board) gives notice that on January 26, 2005, the Board issued an order in Docket No. RMU-05-1, In re: Revised Procedural Rules, "Order Commencing Rule Making."

The rule making, which results from the Board's review of its rules pursuant to Executive Orders 8 and 9 issued by Governor Vilsack on September 14, 1999, proposes to adopt Chapters 7 and 26 and to amend subrules 1.8(4) and 32.9(4).

On February 23, 2000, the Board issued an order directing staff to review the Board's administrative rules. Staff reviewed the Board's procedural rules applicable to contested case proceedings, investigations, and other hearings in 199 IAC 7 and sent an initial report with suggested changes to interested members of the public. The report included conceptual ideas for changes to the rules, not actual rule language.

Comments on the report were received from the Iowa Association of Municipal Utilities, the Consumer Advocate Division of the Department of Justice, Qwest Corporation, MidAmerican Energy Company, the Iowa Association of Electric Cooperatives, and the Iowa Telecommunications Association. Alliant Energy filed a statement that it had no substantive comments regarding the report.

Revisions to the initial report were made based on the comments received, and the Board submitted a revised assessment report to the Governor's office for review. The Governor approved the Board's assessment report on September 25, 2002.

The Board considered the assessment report, the comments received on the initial report, and the principles contained in Executive Orders 8 and 9 when drafting the proposed rules that are the subject of this docket. The Board's current Chapter 7 rules form the basis of most of the proposed rules. Board rule 199—1.8(17A,474), the uniform contested case rules, and the Department of Inspections and Appeals (DIA) contested case hearing rules at 481 IAC 10 were used as the basis of some of the rules.

Current Chapter 7 rules combine procedural rules applicable to all cases, unless specifically excluded, and procedural rules applicable only to rate cases, tariff filings, and rate regulation election by rural electric cooperatives. In its initial report, the team suggested that all rules applying only to rate cases, tariff filings, and rate regulation election by rural electric cooperatives be moved to a separate chapter. Commentors were supportive of this concept. Therefore, in this rule making, the Board proposes to leave the general procedural rules applicable to all proceedings, unless specifically excluded, in Chapter 7. The Board proposes to move all rules applicable only to rate cases, tariff filings, and rate regulation election by rural electric cooperatives to new Chapter 26 without making any changes to those rules at this time. The Board proposes a new rule 199—26.1(17A,476) setting forth the scope of the chapter, but the remaining rules in new Chapter 26 are the same as in current Chapter 7. In this rule-

making docket, the Board is taking comments only on the proposed Chapter 7 rules. It will defer consideration of the Chapter 26 rules for a separate rule-making docket. In addition, procedural rules applicable only to electric transmission line cases (E dockets) and pipeline permit proceedings (P dockets) will be proposed in a separate rule-making docket.

Proposed Chapter 7 has been completely reorganized according to the chronological order of a typical contested case. All rule references are to the reorganized proposed rules.

The order commencing the rule making contains a discussion of the background and reasons for this proposed rule making and specifically solicits comment whether proposed subrule 7.18(2) is used and needed. The order is available on the Board's Web site at www.state.ia.us/iub.

Pursuant to Iowa Code section 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before March 22, 2005, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069. A public hearing to receive comments on the proposed amendments will be held at 10 a.m. on April 26, 2005, in the Board's hearing room at the address listed above.

Subrule 7.1(7) contains a waiver provision that refers to the Board's general waiver provision in 199 IAC 1.3(17A, 474,476,78GA,HF2206), which is applicable to these rules.

These amendments are intended to implement Iowa Code sections 17A.4, 474.5, and 476.2.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 1.8(4) as follows:

1.8(4) ~~Service of documents.~~

~~a. Method of service. Unless otherwise specified, the papers which are required to be served in a proceeding may be served by first-class mail, properly addressed with postage prepaid, or by delivery in person. When a paper is served, the party effecting service shall file with the board proof of service substantially in the form prescribed in board rule 2.2(16) or by admission of service by the party served or his attorney. The proof of service shall be attached to a copy of the paper served. When service is made by the board, the board will attach an affidavit of service, signed by the person serving same, to the original of the paper.~~

~~b. Date of service. The date of service shall be the day when the paper served is deposited in the United States mail or is delivered in person.~~

~~c. Parties entitled to service. A party or other person filing a notice, motion, or pleading in any proceeding shall serve the notice, motion, or pleading on all other parties. Unless a different requirement is specified in these rules, a party formally filing any such document or any other material with the board shall serve three copies of the document or material on the consumer advocate at the same time as the filing is made with the board and by the same delivery method used for filing with the board. "Formal filings" include, but are not limited to, all documents that are filed in a docketed proceeding, or that request initiation of a docketed proceeding. The address of the consumer advocate is Office of Consumer Advocate, 310 Maple Street, Des Moines, Iowa 50319-0069.~~

~~d. Number of copies. An original and ten copies are required for most filings made with the board. There are some exceptions, which are listed below. The board may request additional copies.~~

~~A = Annual Report (rate regulated 2 copies, non-rate regulated 1 copy)~~
~~C = Complaints (original)~~
~~CCF = Customer Contribution Fund (original + 1 copy)~~
~~E = Electric Franchise or Certificate (original + 3 copies)~~
~~EAC = Energy Adjustment Clause (original + 3 copies)~~
~~GCU = Generating Certificate Utility (original + 20 copies)~~
~~H = Accident (original + 1 copy)~~
~~P = Pipeline Permit (original + 2 copies)~~
~~PGA = Purchased Gas Adjustment (original + 3 copies)~~
~~R = Reports-Outages (original + 1 copy)~~
~~RFU = Refund Filing Utility (original + 3 copies)~~
~~RN = Rate Notification (original + 2 copies)~~
~~TF = Tariff Filing (original + 3 copies)~~

~~e. Upon attorneys. When a party has appeared by attorney, service upon the attorney shall be deemed proper service upon the party.~~

Cross reference to service and number of copies. The board's rule regarding service of documents is at 199—subrule 7.4(6). The board's rule regarding number of copies is at 199—subrule 7.4(4).

ITEM 2. Rescind 199—Chapter 7 and adopt the following **new** Chapters 7 and 26 in lieu thereof:

CHAPTER 7
PRACTICE AND PROCEDURE

199—7.1(17A,476) Scope and applicability.

7.1(1) This chapter applies to contested case proceedings, investigations, and other hearings conducted by a presiding officer, unless such proceedings, investigations, and hearings are excepted below, otherwise ordered by the presiding officer in any proceeding, or are subject to special rules or procedures that may be adopted in specific circumstances.

7.1(2) Additional rules applicable only to rate cases, tariff filings, and rate regulation election by rural electric cooperatives are contained in 199—Chapter 26.

7.1(3) With the exception of rules 7.22(17A,476) (ex parte communications), 7.26(17A,476) (appeals from decisions of administrative law judge), and 7.27(17A,476) (rehearing and reconsideration), none of these procedures shall apply to electric transmission line hearings under Iowa Code chapter 478 and 199—Chapter 11 or to pipeline or underground gas storage hearings under Iowa Code chapter 479 or 479B and 199—Chapters 10 and 13. Procedural rules applicable to these proceedings are found in the respective chapters.

7.1(4) Notice of inquiry dockets. The board may issue a notice of inquiry and establish a docket through which the inquiry can be processed. The procedural rules in this chapter shall not apply to these dockets. Instead, the procedures for a notice of inquiry docket shall be specified in the initiating order and shall be subject to change by subsequent order or ruling by the board or the assigned inquiry docket manager. The procedures may include some or all of these procedural rules.

7.1(5) Reorganizations. Procedural rules applicable to reorganizations are included in 199—32.9(476). In the event the requirements in 199—32.9(476) conflict with the re-

quirements in this chapter, the 199—32.9(476) requirements are controlling.

7.1(6) Discontinuance of service.

a. Scope. This rule applies to discontinuance of utility service pursuant to Iowa Code section 476.20(1), which includes but is not limited to the termination or transfer of the right and duty to provide utility service to a community or part of a community incident to the transfer, by sale or otherwise, except a stock transfer incident to corporate reorganization. This rule does not limit rights or obligations created by other applicable statutes or rules including, but not limited to, the rights and obligations created by Iowa Code sections 476.22 to 476.26.

b. Application. A public utility shall obtain board approval prior to discontinuance of utility service, except in cases of emergency, nonpayment of account, or violation of rules and regulations. The public utility shall file an application for permission to discontinue service that includes a summary of the relevant facts and the grounds upon which the application should be granted. When the discontinuance of service is incident to the transfer of utility property, the transferor utility and the transferee shall file a joint application.

c. Approval. Within 30 days after an application is filed, the board shall approve the application or docket the application for further investigation. Failure to act on the application within 30 days will be deemed approval of the application.

d. Contested cases. Contested cases under paragraph "c" shall normally be completed within four months after date of docketing. Extensions may be ordered for good cause.

e. Criteria. The application will be granted if the board finds discontinuance of service is reasonable and in the public interest, the utility service is no longer necessary or, in the case of a transfer of service, if the board finds the transferee is ready, willing, and able to provide comparable utility service.

7.1(7) The purpose of these rules is to facilitate the transaction of business before the board and to promote the just resolution of controversies. Consistent with this purpose, the application of any of these rules, unless otherwise required by law, may be waived by the presiding officer pursuant to 199—1.3(17A,474,476).

199—7.2(17A,476) Definitions. Except where otherwise specifically defined by law:

"Board" means the Iowa utilities board or a majority thereof.

"Complainants" are persons who complain to the board of any act or thing done or omitted to be done in violation, or claimed to be in violation, of any provision of Iowa Code chapters 476 through 479B, or of any order or rule of the board.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a "no factual dispute" contested case under Iowa Code section 17A.10A.

"Data request" means a discovery procedure in which the requesting party asks another person for specified information.

"Expedited proceeding" means a proceeding before the board in which a statutory or other provision of law requires the board to render a decision in the proceeding in six months or less.

"Filed" means received at the office of the board in a manner and form in compliance with the board's filing requirements.

"Intervenor" means any person who, upon written petition, is permitted to intervene in a specific proceeding before the board.

"Issuance" means the date written on the order unless another date is specified in the order.

"Parties" include, but are not limited to, complainants, petitioners, applicants, respondents, and intervenors.

"Party" means each person named or admitted as a party.

"Person" means as defined in Iowa Code section 4.1(20) and includes individuals and all forms of legal entities.

"Petitioner" means any party who, by written petition, application, or other filing, applies for or seeks relief from the board.

"Presiding officer" means the board, the administrative law judge, or another person so designated by the board for the purposes of a particular proceeding.

"Proposed decision" means the administrative law judge's or presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case that has been assigned by the board to the administrative law judge or a presiding officer.

"Respondent" means any person against whom a complaint or petition is filed, or who by reason of interest or possible interest in the subject matter of a petition or application or the relief sought therein is made a respondent, or to whom an order is directed by the board initiating a proceeding.

"Service" means service by first-class mail pursuant to subrule 7.4(6), unless otherwise specified.

199—7.3(17A,476) Administrative law judges. Administrative law judges may be designated by the board to preside over contested cases and conduct hearings and shall have the following authority, unless otherwise ordered by the board:

1. To regulate the course of hearings;
2. To administer oaths and affirmations;
3. To rule upon the admissibility of evidence and offers of proof;
4. To take or cause depositions to be taken;
5. To dispose of procedural matters, discovery disputes, motions to dismiss, and other motions which may involve final determination of proceedings, subject to review by the board on its own motion or upon application by any party;
6. To certify any question to the board, in the discretion of the administrative law judge or upon direction of the board;
7. To permit and schedule the filing of written briefs;
8. To hold appropriate conferences before, during, or after hearings;
9. To render a proposed decision and order in a contested case proceeding, investigation, or other hearing, subject to review by the board on its own motion or upon application by any party; and
10. To take any other action necessary or appropriate to the discharge of duties vested in the administrative law judge, consistent with law and with the rules and orders of the board.

199—7.4(17A,474,476) General information.

7.4(1) Orders of a presiding officer. All orders made by a presiding officer will be issued and filed in the office of the board. Orders of the presiding officer shall be deemed effective upon issuance by the presiding officer unless otherwise provided in the order. Parties and members of the public may view orders in the board's records and information center and may also view orders (other than orders granting confidential treatment) and a daily summary of filings on the board's Web site located at www.state.ia.us/iub.

UTILITIES DIVISION[199](cont'd)

7.4(2) Communications.

a. All communications to the presiding officer shall be addressed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069, unless otherwise specifically directed by the presiding officer. Pleadings and other papers required to be filed with the board shall be filed within the time limit, if any, for such filing. Unless otherwise specifically provided, all communications and documents are officially filed upon receipt by the executive secretary in a form that complies with the board's filing requirements. Documents filed with the board shall comply with the requirements in 199—subrule 2.1(3). Persons filing a document with the board must comply with the service requirements in subrule 7.4(6) at the time the document is filed with the board.

b. The board may accept filings electronically from time to time pursuant to instructions that will be delineated in the board order or other official statement authorizing those filings. See rule 7.7(17A,476) for requirements for electronic information filed with the board.

7.4(3) Reference to docket number. All filings made in any proceeding after the proceeding has been docketed by the board shall include on the first page a reference to the applicable docket number(s).

7.4(4) Number of copies.

a. An original and ten copies are required for most initial filings in a docket made with the board. There are some exceptions, which are listed below. The presiding officer may request additional copies.

A = Annual Report (rate-regulated 2 copies, non-rate-regulated 1 copy)
C = Complaints filed pursuant to 199—6.2(476) (original)
CCF = Customer Contribution Fund (original + 1 copy)
E = Electric Franchise or Certificate (original + 3 copies)
EAC = Energy Adjustment Clause (original + 3 copies)
GCU = Generating Certificate Utility (original + 20 copies)
H = Accident (original + 1 copy)
HLP = Hazardous Liquid Pipeline (original + 2 copies)
P = Pipeline Permit (original + 2 copies)
PGA = Purchased Gas Adjustment (original + 3 copies)
R = Reports-Outages (original + 1 copy)
RFU = Refund Filing Utility (original + 4 copies)
RN = Rate Notification (original + 3 copies)
TF = Tariff Filing (original + 4 copies)

b. Unless otherwise ordered or specified in this rule, parties must file an original and ten copies of all filings including, but not limited to, pleadings and answers (rule 7.9(17A,476)), prefiled testimony and exhibits (rule 7.10(17A,476)), motions (rule 7.12(17A,476)), petitions to intervene and responses (rule 7.13(17A,476)), proposals for settlement and responses (rule 7.18(17A,476)), stipulations (rule 7.19(17A,476)), withdrawals (rule 7.21(17A,476)), briefs (subrule 7.23(8)), motions to vacate (subrule 7.23(11)), motions to reopen (rule 7.24(17A,476)), interlocutory appeals (rule 7.25(17A,476)), appeals from decisions of the administrative law judge and responses (rule 7.26(17A,476)), applications for rehearing and responses (rule 7.27(17A,476)), and requests for stay and responses (rule 7.28(17A,476)).

c. When separate dockets are consolidated into a single case, parties shall file one extra copy for each consolidated docket, in addition to the original and the normally required number of copies. For example, if three separate dockets are consolidated into a single case, parties must file an original plus two copies plus the normally required number of copies of each document.

d. Rule 7.23(17A,476) contains requirements regarding the required number of copies for evidence introduced at hearing and for briefs. Subrule 7.10(5) contains requirements regarding the required number of copies for workpapers and supporting documents.

e. 199—Chapter 26 contains additional requirements regarding the number of copies required to be filed in rate and tariff proceedings.

7.4(5) Defective filings. Only applications, pleadings, documents, testimony, and other submissions that conform to the requirements of an applicable rule, statute, or order of the presiding officer will be accepted for filing. Applications, pleadings, documents, testimony, and other submissions that fail to substantially conform with applicable requirements will be considered defective and may be rejected unless waiver of the relevant requirement has been granted by the presiding officer prior to filing. The presiding officer may reject a filing even though board employees have file-stamped or otherwise acknowledged receipt of the filing. If a filing is defective due only to the number of copies filed, the board's records and information center staff may correct the shortage of copies with the permission of the filing party and the filing party's agreement to cover all costs of reproduction.

7.4(6) Service of documents.

a. Method of service. Unless otherwise specified by the presiding officer or otherwise agreed to by the parties, documents that are required to be served in a proceeding may be served by first-class mail, properly addressed with postage prepaid, or by delivery in person. When a document is served, the party effecting service shall file with the board proof of service in substantially the form prescribed in 199—subrule 2.2(16) or an admission of service by the party served or the party's attorney. The proof of service shall be attached to a copy of the document served. When service is made by the board, the board will attach a service list with a certificate of service signed by the person serving the document to each copy of the document served.

b. Date of service. Unless otherwise ordered by the presiding officer, the date of service shall be the day when the document served is deposited in the United States mail, is delivered in person, or otherwise as the parties may agree. Although service is effective, the document is not deemed filed with the board until it is received by the board pursuant to subrule 7.4(2).

c. Parties entitled to service. A party or other person filing a notice, motion, pleading, or other document in any proceeding shall contemporaneously serve the document on all other parties. Parties shall serve documents containing confidential information pursuant to a confidentiality agreement executed by the parties, if any. If the parties are unable to agree on a confidentiality agreement, they may ask the presiding officer to issue an appropriate order. A party formally filing any document or any other material with the board shall serve three copies of the document or material on the consumer advocate at the same time as the filing is made with the board and by the same delivery method used for filing with the board. "Formal filings" include, but are not limited to, all documents that are filed in a docketed proceeding, or that request initiation of a docketed proceeding. The address of the consumer advocate is Office of Consumer Advocate, 310 Maple Street, Des Moines, Iowa 50319-0063.

d. Service upon attorneys. When a party has appeared by attorney, service upon the attorney shall be deemed proper service upon the party.

UTILITIES DIVISION[199](cont'd)

7.4(7) Written appearance. Each party to a proceeding shall file a separate written appearance, substantially conforming to the form set forth in 199—subrule 2.2(15), identifying one person upon whom the board may serve all orders, correspondence, or other documents. If a party has previously designated a person to be served on the party's behalf in all matters, filing the appearance will not change this designation, unless the party directs that the designated person be changed in the appearance. If a party files an answer or other responsive pleading containing the information that would otherwise be required in an appearance, the filing of a separate appearance is not required. The appearance may be filed with the party's initial filing in the proceeding or may be filed after the proceeding has been docketed.

7.4(8) Representation by attorney at law.

a. Any party to a proceeding before a presiding officer may appear and be heard through a licensed attorney at law. If the attorney is not licensed by the state of Iowa, permission to appear must be granted by the presiding officer. A verified statement that contains the attorney's agreement to submit to and comply with the Iowa Code of Professional Responsibility for Lawyers must be filed with the board and the written appearance of a resident attorney must be provided for service pursuant to Iowa Admission to the Bar rule 31.14(2).

b. A corporation or association may appear and present evidence by an officer or employee. However, only licensed attorneys shall represent a party before a presiding officer in any matter involving the exercise of legal skill or knowledge, except with the consent of the presiding officer. All persons appearing in proceedings before a presiding officer shall conform to the standard of ethical conduct required of attorneys before the courts of Iowa.

7.4(9) Cross reference to public documents and confidential filings. The board's rule regarding public documents and confidential filings is at 199—1.9(22).

7.4(10) Expedited proceedings.

a. When a statutory or other provision requires the board to render a decision in a proceeding in six months or less, the term "board" is interpreted to mean "presiding officer."

b. If a person claims that a statutory or other provision requires the board to render a decision in a contested case in six months or less, the person shall include the phrase "Expedited Proceedings Required" in the caption of the first pleading filed by the person in the proceeding. If the phrase is not so included in the caption, the board may calculate the time frame for decision from the filing date of the first pleading in which the phrase is included in the caption.

c. If a person claims that a statutory or other provision requires the board to render a decision in a contested case in six months or less, the person shall state the basis for the claim in the first pleading in which the claim is made.

199—7.5(17A,476) Time requirements.

7.5(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

7.5(2) In response to a request or on its own motion, for good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute.

199—7.6(17A,476) Telephone proceedings. The presiding officer may hold proceedings by telephone conference call in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when locations are determined.

199—7.7(17A,476) Electronic files. This rule applies to all electronic information (electronic files) filed with the board. The presiding officer, on the officer's own motion or at the request of a party, may provide for additional or different requirements in specific cases, if necessary.

7.7(1) Electronic files shall be accompanied by a hard-copy printout and a hard-copy index that identifies each electronic file and includes, for each file, a brief description of the sources of inputs, operations performed, and where outputs are next used.

7.7(2) Electronic files that are compressed shall be accompanied by software and clear documentation to reverse the process of compression.

7.7(3) Spreadsheets, workbooks, and databases shall include all cell formulae and cell references to allow board staff to analyze and reproduce calculations.

7.7(4) All electronic files shall be provided in editable form. Any files submitted in portable document format (PDF) shall be accompanied by the original files from which the PDF files were created, in native format and including calculations and formulae.

7.7(5) Electronic information shall be filed in accordance with the board's standards for electronic information unless prior arrangements are made. Standards are available from the board's Records and Information Center, 350 Maple Street, Des Moines, Iowa 50319-0069, and may be reviewed on the board's Web site (www.state.ia.us/iub). If a person proposes to submit electronic information that does not comply with the standards, the person shall contact the executive secretary or general counsel of the board prior to submission. The board may order different requirements and standards for good cause.

199—7.8(17A,476) Procedural schedule and notice of hearing. The presiding officer will issue an order that includes a procedural schedule and notice of hearing. Delivery of the order will be by first-class mail unless otherwise ordered by the presiding oficer.

199—7.9(17A,476) Pleadings and answers.

7.9(1) Pleadings. Pleadings may be required by statute, rule, or order.

7.9(2) Answers.

a. Unless otherwise ordered by the presiding officer, answers to complaints, petitions, applications, or other pleadings shall be filed with the board within 20 days after the day on which the pleading being answered was served upon the respondent or other party. However, when a statute or other provision requires a presiding officer to issue a decision in the case in six months or less, the answer shall be filed with the board within ten days of service of the pleading being answered, unless otherwise ordered by the presiding officer.

b. Each answer must specifically admit, deny, or otherwise answer all material allegations of the pleadings and also briefly set forth the affirmative grounds relied upon to support each answer.

c. Any party who deems the complaint, petition, application, or other pleading insufficient to show a breach of legal duty or grounds for relief may move to dismiss instead of, or in addition to, answering.

d. A party may apply for a more definite and detailed statement instead of, or in addition to, answering, if appropriate.

e. An answer shall substantially comply with the form prescribed in 199—subrule 2.2(8).

7.9(3) Amendments to pleadings. Amendments to pleadings may be allowed upon proper motion at any time during

the pendency of the proceeding upon such terms as are just and reasonable.

199—7.10(17A,476) Prefiled testimony and exhibits.

7.10(1) The presiding officer may order the parties to file prefiled testimony and exhibits prior to the hearing. If ordered to do so, parties must file the prefiled testimony and exhibits according to the schedule in the procedural order.

7.10(2) Prefiled testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. If possible, each line should be separately numbered. When a witness who has submitted prefiled testimony takes the stand, the witness does not ordinarily repeat the written testimony or give new testimony. Instead, the witness is cross-examined by the other parties concerning the statements already made in writing. However, the witness may be permitted to correct or update prefiled testimony on the stand and, in appropriate circumstances and with the approval of the presiding officer, may give a summary of the prefiled testimony. If the witness has more than three corrections to make, then the corrections should be filed in written form prior to the hearing.

7.10(3) Parties who choose not to file prefiled testimony and exhibits before the hearing will not necessarily be precluded from participating in the proceedings. However, when a party has evidence to present, and prefiled testimony has been ordered, the evidence must be presented in the form of prefiled testimony and exhibits filed according to the procedural schedule, unless otherwise ordered.

7.10(4) Prefiled testimony and exhibits must be accompanied by an affidavit in substantially the following form: "I, [person's name], being first duly sworn on oath, state that I am the same [person's name] identified in the testimony being filed with this affidavit, that I have caused the testimony [and exhibits] to be prepared and am familiar with its contents, and that the testimony [and exhibits] is true and correct to the best of my knowledge and belief as of the date of this affidavit."

7.10(5) Prefiled testimony and exhibits shall include, where applicable:

a. All supporting workpapers.

(1) Unless otherwise ordered by the presiding officer, electronic workpapers in native electronic formats that comply with the standards in rule 7.7(17A,476) shall be provided. Noncompliant electronic workpapers shall be provided as a hard copy with a brief description of software and hardware requirements. Noncompliant electronic copies shall be provided upon request by any party or the presiding officer.

(2) All other workpapers and hard-copy printouts of electronic files shall be clearly tabbed and indexed, and pages shall be numbered. Each section shall include a brief description of the sources of inputs, operations contained therein, and where outputs are next used.

(3) Workpapers' underlying analyses and data presented in exhibits shall be explicitly referenced within the exhibit, including the name and other identifiers (e.g., cell coordinates) for electronic workpapers, and volume, tab, and page numbers for other workpapers.

(4) The source of any number used in a workpaper that was not generated by that workpaper shall be identified.

b. The derivation or source of all numbers used in either testimony or exhibits that were not generated by workpapers.

c. Copies of any specific studies or financial literature relied upon or complete citations for them if publicly available.

d. Electronic copies, in native electronic format, of all computer-generated exhibits that comply with the standards in rule 7.7(17A,476). Noncompliant electronic computer-generated exhibits shall be provided as a hard copy with a brief description of software and hardware requirements. Noncompliant electronic copies shall be provided upon request by any party or the presiding officer.

e. Unless otherwise ordered by the presiding officer, the following number of copies shall be filed:

(1) Electronic workpapers - two copies and two hard-copy printouts.

(2) Other workpapers - five copies.

(3) Specific studies or financial literature - two copies.

(4) Computer-generated exhibits - two copies.

7.10(6) If a party has filed part or all of prefiled testimony and exhibits as confidential pursuant to 199—1.9(22), and then later withdraws the claim of confidentiality for part or all of the testimony and exhibits, or if the board denies the request to hold the testimony and exhibits confidential, the party must refile the testimony and exhibits without the confidential stamp on each page.

199—7.11(17A,476) Documentary evidence in books and materials. When documentary evidence being offered is contained in a book, report, or other document, the offering party should ordinarily file only the material, relevant portions in an exhibit or read them into the record. If a party offers the entire book, report, or other document containing the evidence being offered, the party shall plainly designate the evidence so offered.

199—7.12(17A,476) Motions. Motions, unless made during hearing, shall be in writing, state the grounds for relief, and state the relief or order sought. Motions based on matters that do not appear of record shall be supported by affidavit. Motions shall substantially comply with the form prescribed in 199—subrule 2.2(14). Motions shall be filed and served pursuant to rule 7.4(17A,476). Any party may file a written response to a motion no later than 14 days from the date the motion is filed, unless the time period is extended or shortened by the presiding officer. When a statutory or other provision requires a presiding officer to issue a decision in the case in six months or less, written responses to a motion must be filed within seven days of the date the motion is filed, unless otherwise ordered by the presiding officer. Failure to file a timely response may be deemed a waiver of objection to the motion.

199—7.13(17A,476) Intervention.

7.13(1) Petition. Unless otherwise ordered by the presiding officer, a request to intervene in a proceeding shall be by petition to intervene filed no later than 20 days following the order setting a procedural schedule. However, when a statutory or other provision requires a presiding officer to issue a decision in the case in six months or less, the petition to intervene must be filed no later than ten days following the order setting a procedural schedule, unless otherwise ordered by the presiding officer. A petition to intervene shall substantially comply with the form prescribed in 199—subrule 2.2(10).

7.13(2) Response. Any party may file a response within seven days of service of the petition to intervene unless the time period is extended or shortened by the presiding officer.

7.13(3) Grounds for intervention. Any person having an interest in the subject matter of a proceeding may be permitted to intervene at the discretion of the presiding officer. In determining whether to grant intervention, the presiding officer shall consider:

a. The prospective intervenor's interest in the subject matter of the proceeding;

b. The effect of a decision that may be rendered upon the prospective intervenor's interest;

c. The extent to which the prospective intervenor's interest will be represented by other parties;

d. The availability of other means by which the prospective intervenor's interest may be protected;

e. The extent to which the prospective intervenor's participation may reasonably be expected to assist in the development of a sound record through presentation of relevant evidence and argument; and

f. Any other relevant factors.

7.13(4) In determining the extent to which the prospective intervenor's interest will be represented by other parties, the consumer advocate's role of representing the public interest shall not be interpreted as representing every potential interest in a proceeding.

7.13(5) The presiding officer may limit a person's intervention to particular issues or to a particular stage of the proceeding, or may otherwise condition the intervenor's participation in the proceeding.

7.13(6) When two or more intervenors have substantially the same interest, the presiding officer, in the presiding officer's discretion, may order consolidation of petitions and briefs and limit the number of attorneys allowed to participate actively in the proceedings to avoid a duplication of effort.

7.13(7) A person granted leave to intervene is a party to the proceeding. However, unless the presiding officer rules otherwise for good cause shown, an intervenor shall be bound by any agreement, arrangement, or order previously made or issued in the case.

199—7.14(17A,476) Consolidation and severance.

7.14(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested cases. When deciding whether to consolidate, the presiding officer shall consider:

a. Whether the matters at issue involve common parties or common questions of fact or law;

b. Whether consolidation is likely to expedite or simplify consideration of the issues involved;

c. Whether consolidation would adversely affect the substantial rights of any of the parties to the proceedings; and

d. Any other relevant factors.

7.14(2) Severance. The presiding officer may order any contested case or portions thereof severed for good cause.

199—7.15(17A,476) Discovery.

7.15(1) Discovery procedures applicable in civil actions are available to parties in contested cases.

7.15(2) Unless otherwise ordered by the presiding officer or agreed to by the parties, data requests or interrogatories served by any party shall either be responded to or objected to, with concisely stated grounds for relief, within seven days of receipt. When a statutory or other provision requires a presiding officer to issue a decision in the case in six months or less, this time is reduced to five days.

7.15(3) Unless otherwise ordered by the presiding officer, time periods for compliance with all forms of discovery other than those stated in subrule 7.15(2) shall be as provided in the Iowa Rules of Civil Procedure.

7.15(4) Prior to filing any motion related to discovery, parties shall make a good-faith effort to resolve discovery disputes without the involvement of the presiding officer.

7.15(5) Any motion related to discovery shall allege that the moving party has made a good-faith attempt to resolve the discovery issues involved with the opposing party. Opposing parties shall be given the opportunity to respond within ten days of the filing of the motion unless the time is shortened by order of the presiding officer. The presiding officer may rule on the basis of the written motion and any response, or may order argument or other proceedings on the motion.

199—7.16(17A,476) Subpoenas.

7.16(1) Issuance.

a. An agency subpoena shall be issued to a party on request. The request shall be in writing and include the name, address, and telephone number of the requesting party. In the absence of good cause for permitting later action, a request for a subpoena must be received at least seven days before the scheduled hearing.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

7.16(2) Motion to quash or modify. Upon motion, the presiding officer may quash or modify a subpoena for any lawful reason.

199—7.17(17A,476) Prehearing conference. An informal conference of parties may be ordered at the discretion of the presiding officer or at the request of any party for any appropriate purpose. Any agreement reached at the conference shall be made a part of the record in the manner directed by the presiding officer.

199—7.18(17A,476) Settlements. Parties to a contested case may propose to settle all or some of the issues in the case. The presiding officer will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. Board adoption of a settlement constitutes the final decision of the board on issues addressed in the settlement.

7.18(1) Proposal of settlements. Two or more parties may by written motion propose settlements for adoption by the presiding officer. The motion shall contain a statement adequate to advise the presiding officer and parties not expressly joining the proposal of its scope and of the grounds on which adoption is urged. Parties may propose a settlement for adoption by the presiding officer at any time.

7.18(2) Conference. After proposal of a settlement that is not supported by all parties, and prior to approval, the settling parties shall convene at least one conference with notice and opportunity to participate provided to all parties for the purpose of discussing the settlement proposal. Written notice of the date, time, and place shall be furnished at least seven days in advance to all parties to the proceeding. Attendance at any settlement conference shall be limited to the parties to a proceeding and their representatives. A party that has been given notice and opportunity to participate in the conference and does not do so shall be deemed to have waived its right to contest a proposed settlement, unless good cause is shown for the failure to participate.

7.18(3) Comment period. When a party to a proceeding does not join in a settlement proposed for adoption by the presiding officer, the party may file comments contesting all or part of the settlement with the board. Unless otherwise ordered by the presiding officer, the party shall file its comments within 14 days of filing of the motion proposing settlement, and shall serve such comments on all parties to the proceeding at the time of filing. Unless otherwise ordered by the presiding officer, parties shall file reply comments within seven days of filing of the comments.

7.18(4) Contents of comments. A party contesting a proposed settlement must specify in its comments the portions of

the settlement that it opposes, the legal basis of its opposition, and the factual issues that it contests. Any failure by a party to file comments may, at the presiding officer's discretion, constitute waiver by that party of all objections to the settlement.

7.18(5) Contested settlements. If the proposed settlement is contested, in whole or in part, on any material issue of fact by any party, the presiding officer may schedule a hearing on the contested issue(s). The presiding officer may decline to schedule a hearing where the contested issue of fact is not material or where the contested issue is one of law.

7.18(6) Unanimous proposed settlement. In proceedings where all parties join in the proposed settlement, parties may propose a settlement for adoption by the presiding officer any time after docketing. Subrules 7.18(2) through 7.18(5) shall not apply to a proposed settlement filed concurrently by all parties to the proceeding.

7.18(7) Inadmissibility. Any discussion, admission, concession, or offer to settle, whether oral or written, made during any negotiation on a settlement shall be privileged to the extent provided by law.

199—7.19(17A,476) Stipulations. Parties to any proceeding or investigation may, by stipulation filed with the board, agree upon the facts or law or any portion thereof involved in the controversy, subject to approval by the presiding officer.

199—7.20(17A,476) Investigations. The availability of discovery pursuant to Iowa Code section 17A.13 or the rules of civil procedure shall not be construed to limit the investigatory powers of the board, its representatives, or the consumer advocate.

199—7.21(17A,476) Withdrawals. A party requesting a contested case proceeding may, with the permission of the presiding officer, withdraw that request prior to the hearing.

199—7.22(17A,476) Ex parte communication. Ex parte communication is prohibited as provided in Iowa Code section 17A.17. Parties or their representatives shall not communicate directly or indirectly with presiding officers in connection with any issue of fact or law in a contested case except upon notice and an opportunity for all parties to participate. Presiding officers shall not communicate directly or indirectly with parties or their representatives in connection with any issue of fact or law in a contested case except upon notice and an opportunity for all parties to participate.

199—7.23(17A,476) Hearings.

7.23(1) Presiding officer. The presiding officer presides at the hearing and may rule on motions and issue such orders and rulings as will ensure the orderly conduct of the proceedings. The presiding officer shall maintain the decorum of the hearing and may refuse to admit, may set limits on, or may expel from the hearing anyone whose conduct is disorderly.

7.23(2) Witnesses. Each witness shall be sworn or affirmed by the presiding officer or the court reporter and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law. In appropriate circumstances, the presiding officer may order that witnesses testify as members of a witness panel.

7.23(3) Order of presenting evidence. The presiding officer shall determine the order of the presentation of evidence based on applicable law and the interests of efficiency and justice. Normally, the petitioner shall open the presentation of evidence. In cases where testimony has been prefiled, each witness shall be available for cross-examination on all testimony prefiled by or on behalf of that witness when the witness takes the stand, either alone or as a member of a witness panel.

7.23(4) Evidence.

a. Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence, cross-examine witnesses, and present evidence in rebuttal. Ordinarily, prefiled testimony is used in hearings pursuant to rule 7.10(17A,476). Nonsubstantive corrections to prefiled testimony may be made at the beginning of the testimony. However, if more than three corrections need to be made, the sponsoring party shall file corrected prefiled testimony prior to the hearing. The sponsoring party must provide one copy of prefiled testimony and included exhibits to the court reporter.

b. The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with law.

c. Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

d. Unless previously included with prefiled testimony, the party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. All exhibits admitted into evidence shall be appropriately marked and made part of the evidentiary record. If an exhibit is admitted, unless previously included with prefiled testimony, the sponsoring party must provide at least one copy of the exhibit to each opposing party, one copy for each presiding officer, one copy for the witness (if any), one copy for the court reporter, and two copies for board staff, unless otherwise ordered.

e. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with the permission of the presiding officer, present the testimony. The presiding officer may require the offering party to file a written statement of the excluded oral testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record. Unless previously included with prefiled testimony, the sponsoring party must provide at least one copy of the document or exhibit to each opposing party, one copy for each presiding officer, one copy for the witness (if any), one copy for the court reporter, and two copies for board staff, unless otherwise ordered.

7.23(5) Objections. Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. All objections shall be timely made on the record and state the grounds relied on. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

7.23(6) Further evidence. At any stage during or after the hearing, the presiding officer may order a party to present additional evidence and may conduct additional proceedings as appropriate.

7.23(7) Participation at hearings by nonparties. The presiding officer may permit any person to be heard and to examine and cross-examine witnesses at any hearing, but such person shall not be a party to the proceedings unless so designated. The testimony or statement of any person so appearing shall be given under oath and such person shall be subject to cross-examination by parties to the proceeding, unless the presiding officer orders otherwise.

7.23(8) Briefs.

a. Unless waived by the parties with the consent of the presiding officer, the presiding officer shall set times for the

filing and service of briefs. Unless otherwise ordered by the presiding officer, initial briefs shall be filed simultaneously by all parties and reply briefs shall be filed simultaneously.

b. Unless otherwise ordered, parties shall file an original and ten copies of briefs with the board and shall serve two copies of briefs on the other parties pursuant to subrule 7.4(6). Three copies of briefs shall be served on the consumer advocate pursuant to subrule 7.4(6).

c. Initial briefs shall contain a concise statement of the case. Arguments based on evidence introduced during the proceeding shall specify the portions of the record where the evidence is found. Initial briefs shall include all arguments the party intends to offer in support of its case and against the record case of the adverse party or parties. Unless otherwise ordered, a reply brief shall be confined to refuting arguments made in the brief of an adverse party. Unless specifically ordered to brief an issue, a party's failure to address an issue by brief shall not be deemed a waiver of that issue and shall not preclude the presiding officer from deciding the issue on the basis of evidence appearing in the record.

d. Every brief of more than 20 pages shall contain on its front leaves a table of contents with page references. Each party's initial brief shall not exceed 90 pages and each subsequent brief shall not exceed 40 pages, exclusive of the table of contents. A brief that exceeds these page limits shall be deemed a defective filing and may be rejected as provided in subrule 7.4(5). Pursuant to 199—1.3(17A,474,476), the presiding officer may grant a waiver of these page limits. Waiver may be granted ex parte.

e. Briefs shall comply with the following requirements.

(1) The size of pages shall be 8½ by 11 inches.

(2) All printed matter must appear in at least 11-point type.

(3) There shall be margins of at least one inch on the top, bottom, right, and left sides of the sheet.

(4) The body of the brief shall be double-spaced.

(5) Footnotes may be single-spaced but shall not exceed one-half page in length.

(6) The printed matter may appear in any pitch, as long as the characters are spaced in a readable manner. Any readable font is acceptable.

7.23(9) Oral arguments. The presiding officer may set a time for oral argument at the conclusion of the hearing, or may set a separate date and time for oral argument. The presiding officer may set a time limit for argument. Oral argument may be either in addition to or in lieu of briefs. Unless specifically ordered to argue an issue, a party's failure to address an issue in oral argument shall not be deemed a waiver of the issue.

7.23(10) Record. The record of the case is maintained in the board's records and information center at the office of the board. Unless held confidential pursuant to 199—1.9(22), parties and members of the public may examine the record and obtain copies of documents other than the transcript. The transcript will be available for public examination, but copying of the transcript may be restricted by the terms of the contract with the court reporting service.

7.23(11) Default.

a. If a party fails to appear at a hearing after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

b. Default decisions or decisions rendered on the merits after a party has failed to appear at a hearing are final agency action unless otherwise ordered by the presiding officer. However, within 15 days after the date of notification or mailing of the decision, a motion to vacate may be filed and served on all parties. The motion to vacate must state all facts relied on by the moving party that show good cause existed for that party's failure to appear at the hearing. The stated facts must be substantiated by affidavit attached to the motion. Unless otherwise ordered, adverse parties shall have 10 days to respond to a motion to vacate. If the decision is rendered by an administrative law judge, the board may review it on the board's own motion within 15 days after the date of notification or mailing of the decision.

c. The time for appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

d. Properly substantiated and timely filed motions to vacate shall be granted for good cause shown. The burden of proof as to good cause is on the moving party. "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

e. An administrative law judge's decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case. An administrative law judge's decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 7.25(17A,476).

f. If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall schedule another hearing and the contested case shall proceed accordingly.

g. A default decision may award any relief consistent with the record in the case. The default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to an appeal pursuant to rule 7.26(17A,476), or a request for stay pursuant to rule 7.28(17A,476).

199—7.24(17A,476) Reopening record. The presiding officer, on the officer's own motion or on the motion of a party, may reopen the record for the reception of further evidence. When the record was made before the board, a motion to reopen the record may be made any time prior to the issuance of a final decision. When the record was made before an administrative law judge, a motion to reopen the record shall be made prior to the expiration of the time for appeal from the proposed decision, and the motion shall stay the time for filing an appeal. A motion to reopen the record shall substantially comply with the form prescribed in 199—subrule 2.2(12). Affidavits of witnesses who will present new evidence shall be attached to the motion and shall include an explanation of the competence of the witness to sponsor the evidence and a description of the evidence to be included in the record.

199—7.25(17A,476) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the administrative law judge. In determining whether to do so, the board may consider the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the administrative law judge would provide an adequate remedy. Any request for interlocutory review must be filed within ten days of issuance of the challenged order, but no later than the time for compliance with

the order or ten days prior to the date of hearing, whichever is first.

199—7.26(17A,476) Appeals to board from decision of administrative law judge.

7.26(1) Notification of proposed decision. A copy of the administrative law judge's proposed decision and order in a contested case shall be sent by first-class mail, on the date the order is issued, to the last known address of each party. The decision shall normally include "Proposed Decision and Order" in the title and shall inform the parties of their right to appeal an adverse decision and the time in which an appeal must be taken.

7.26(2) Appeal from proposed decision. A proposed decision and order of the administrative law judge in a contested case shall become the final decision of the board unless, within 15 days after the decision is issued, the board moves to review the decision or a party files an appeal of the decision with the board. The administrative law judge may shorten the time for appeal if no party objects, no written objections were filed in the case, and there are no issues that indicate a need for the 15-day appeal time.

7.26(3) Any adversely affected party may appeal a proposed decision by timely filing a notice of appeal. The appellant shall file an original and ten copies of the notice of appeal with the board, provide a copy to the administrative law judge, and simultaneously serve a copy of the notice pursuant to subrule 7.4(6) on all parties.

7.26(4) The board shall not consider any claim of error based on evidence which was not introduced before the administrative law judge. Newly discovered material evidence must be presented to the administrative law judge pursuant to a motion to reopen the record.

7.26(5) Contents of notice of appeal. The notice of appeal shall include the following in separately numbered paragraphs supported, where applicable, by controlling statutes and rules.

a. A brief statement of the facts.

b. A brief statement of the history of the proceeding, including the date and a description of any ruling claimed to be erroneous.

c. A statement of each of the issues to be presented for review.

d. A precise description of the error(s) upon which the appeal is based. If a claim of error is based on allegations that the administrative law judge failed to correctly interpret the law governing the proceeding, exceeded the authority of an administrative law judge, or otherwise failed to act in accordance with law, the appellant shall include a citation to briefs or other documents filed with the administrative law judge where the legal points raised in the appeal were discussed. If a claim of error is based on allegations that the administrative law judge failed to give adequate consideration to evidence introduced at hearing, the appellant shall include a citation to pages of the transcript or other documents where the evidence appears.

e. A precise statement of the relief requested.

f. A statement as to whether an opportunity to file a brief or make oral argument in support of the appeal is requested and, if an opportunity is sought, a statement explaining the manner in which briefs and arguments presented to the administrative law judge are inadequate for purposes of appeal.

g. Certification of service showing the names and addresses of all parties upon whom a copy of the notice of appeal was served.

7.26(6) Responsive filings and cross-appeals. If parties wish to respond to the notice of appeal, or file a cross-appeal, they must file the response or notice of cross-appeal within 14 days after the filing of the notice of appeal, unless otherwise ordered by the board. When a statutory or other provision requires a presiding officer to issue a decision in the case in less than six months, the response or cross-appeal must be filed within seven days of filing the notice of appeal.

a. Responses shall specifically respond to each of the substantive paragraphs of the notice of appeal and shall state whether an opportunity to file responsive briefs or to participate in oral argument is requested.

b. Parties who file a cross-appeal must comply with the requirements for filing a notice of appeal contained in this rule.

7.26(7) Ruling on appeal. After the filing of the last appeal, response, or cross-appeal, the board shall issue an order that may establish a procedural schedule for the appeal or may be the board's final decision on the merits of the appeal.

199—7.27(17A,476) Rehearing and reconsideration.

7.27(1) Application for rehearing or reconsideration. Any party to a contested case may file an application for rehearing or reconsideration of the final decision. The application for rehearing or reconsideration shall be filed within 20 days after the final decision in the contested case is issued.

7.27(2) Contents of application. Applications for rehearing or reconsideration shall specify the findings of fact and conclusions of law claimed to be erroneous, with a brief statement of the alleged grounds of error. Any application for rehearing or reconsideration asserting that evidence has arisen since the final order was issued as a ground for rehearing or reconsideration shall present the evidence by affidavit that includes an explanation of the competence of the person to sponsor the evidence and a brief description of the evidence sought to be included. An application shall substantially comply with the form prescribed in 199—subrule 2.2(13).

7.27(3) Requirements for objections to applications for rehearing or reconsideration. Notwithstanding the provisions of subrule 7.9(2), an answer or objection to an application for a rehearing or reconsideration must be filed within 14 days of the date the application was filed with the board, unless otherwise ordered by the board. The answer or objection to the application shall substantially comply with the form prescribed in 199—subrule 2.2(8).

199—7.28(17A,476) Stay of agency decision.

7.28(1) Any party to a contested case proceeding may petition the board for a stay or other temporary remedy pending judicial review of the proceeding. The petition shall state the reasons justifying a stay or other temporary remedy and be served on all other parties pursuant to subrule 7.4(6).

7.28(2) In determining whether to grant a stay, the board shall consider the factors listed in Iowa Code section 17A.19(5)(c).

7.28(3) A stay may be vacated by the board upon application of any party.

199—7.29(17A,476) Emergency adjudicative proceedings.

7.29(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the board may issue an emergency adjudicative order in compliance with Iowa Code section 17A.18A to order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency. Before issuing an emergency ad-

judicative order, the board may consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to provide reasonably reliable information under the circumstances;

b. Whether the specific circumstances that pose immediate danger to the public health, safety, or welfare are likely to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety, or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and

e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

7.29(2) Issuance of order.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the board's discretion, to justify the determination of an immediate danger and the board's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by the most reasonably available method, which may include one or more of the following methods: personal delivery; certified mail; first-class mail; fax; or E-mail. To the degree practical, the board shall select the method or methods most likely to result in prompt, reliable delivery.

c. Unless the written emergency adjudicative order is delivered by personal service on the day issued, the board shall make reasonable efforts to contact the persons who are required to comply with the order by telephone, in person, or otherwise.

7.29(3) Completion of proceedings. Issuance and delivery of a written emergency adjudicative order will normally include notification of a procedural schedule for completion of the proceedings.

These rules are intended to implement Iowa Code sections 17A.4, 474.5, and 476.2.

CHAPTER 26
RATE CASES, TARIFFS, AND RATE REGULATION ELECTION PRACTICE AND PROCEDURE

199—26.1(17A,476) Scope and applicability.

26.1(1) This chapter contains procedural rules applicable only to rate cases, tariff filings, and rate regulation election by electric cooperatives. The board's general contested case procedural rules that also apply to these types of proceedings are contained at 199—Chapter 7.

26.1(2) The purpose of these rules is to facilitate the transaction of business before the board and to promote the just resolution of controversies. Consistent with this purpose, the application of any of these rules, unless otherwise required by law, may be waived by the board pursuant to 199—1.3(17A,474,476).

199—26.2(17A,476) Defective filings. No application, pleading, document, testimony or other submission filed with a tariff incorporating changes in rates, charges, schedules, or regulations for public utility service shall be rejected as defective under this rule after the date of a board order docketing investigation of the tariff as a formal proceeding.

199—26.3(17A,476) Proposal of settlements. In proposed settlements which resolve all revenue requirement issues in a rate case proceeding, parties to the settlement shall jointly file the revenue requirement calculations reflecting the adjustments proposed to be settled. In proposed settlements which resolve some revenue requirement issues in a rate case proceeding and retain some issues for litigation, each party to the settlement who has previously filed a complete revenue requirement calculation shall file its revenue requirement calculation reflecting the adjustments proposed to be settled and any remaining issues to be litigated. In proposed settlements which produce an agreed-upon revenue requirement as a mutually acceptable outcome to the proceeding without an agreement on each revenue requirement issue, parties to the settlement shall jointly file schedules reflecting the specific adjustments for which the parties reached agreement. For those issues included in the proposed settlement which were not specifically resolved, the schedules should identify the range between the positions of the parties.

199—26.4(476) Rate case expense.

26.4(1) A utility making an application pursuant to Iowa Code section 476.6 shall file, within one week of docketing of the rate case, the estimated or, if available, actual expenses incurred or to be incurred by the utility in litigating the rate case. Except for expenses incurred in preparation of the rate filing and notification of customers, the expenses shall be limited to expenses incurred in the time period from the date the initial application is filed through the utility's reply brief. Each expense shall be designated as either estimated or actual.

26.4(2) Estimated or, if available, actual expenses shall identify specifically:

a. Printing costs for the following*:*
(1) Rate notification letters
(2) Initial filing
(3) Testimony
(4) Briefs
(5) Other (specify)
b. Postage costs
c. Outside counsel cost
(1) Number of attorneys engaged as outside counsel
(2) Hours
(3) Cost/hour
d. Outside expert witness/consultant
(1) Number of outside consultants employed
(2) Hours per consultant employed
(3) Cost/hour per consultant employed
e. Expenses stated by individual for both outside consultants and utility personnel
(1) Travel
(2) Hotel
(3) Meals
(4) Other (specify)
f. Other (specify)

26.4(3) Rate case expense shall not include recovery for expenses that are otherwise included in test year expenses, including salaries for staff preparing filing, staff attorneys, and staff witnesses. Rate case expense shall include only expenses not covered by test year expenses for the period stated in subrule 26.4(1).

26.4(4) Total allowable rate case expense shall include expenses incurred by board staff and the consumer advocate for the time period stated in subrule 26.4(1). The rate case expense to be filed by the utility shall not include these expenses.

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26.4(5) The reasonableness of the estimates shall be litigated during the proceeding. At the request of the consumer advocate or the utilities board, company shall make witnesses available on any item included in the estimated rate case expense for cross-examination during the hearing.

26.4(6) Actual utility expenses shall be filed in the same format and detail as estimated expenses and shall be filed within two weeks after filing the final brief. All material variances shall be fully supported and justified.

26.4(7) The board may schedule any additional hearings to litigate the reasonableness of the final expenses.

This rule is intended to implement Iowa Code section 476.6(8).

199—26.5(476) Applications and petitions.

26.5(1) Customer notification procedures.

a. Definitions. Terms not otherwise defined in these rules shall be understood to have their usual meaning.

(1) "Rates" shall mean amounts per unit billed to customers for a recurring service or commodity rendered or offered by the public utility. "Rate amounts" shall mean the total bill rendered to a customer pursuant to a given rate schedule.

(2) "Charges" shall mean amounts billed to customers for a nonrecurring service or commodity rendered or offered by the public utility.

(3) "Commodity" or "commodities" shall mean water, electricity, or natural gas.

(4) "Effective date" shall mean the date on which the first customer begins receiving the service or commodity under the new rate or charge.

b. Notification of customers. All public utilities, except those exempted from rate regulation by Iowa Code section 476.1 which propose to increase rates or charges, shall mail or deliver a written notice pursuant to paragraph "c" or "d" to all customers in all affected rate classifications. The written notice shall be mailed or delivered before the application for increase is filed, but not more than 62 days prior to the filing. Any public utility exempt from rate regulation by Iowa Code section 476.1, which proposes to increase rates or charges, shall mail or deliver, not less than 30 days prior to the proposed effective date, a written notice pursuant to paragraph "c" or "d" of the rate or charge increase to all customers in all affected rate classifications.

Provided, however, that if a telephone utility is proposing to increase rates for only interexchange services, excluding EAS and intrastate access services, the utility shall cause the notice of proposed increase to be published, in at least one newspaper of general circulation in each county where such increased rates are proposed to be effective. The notice shall be published at least twice in such newspaper no more than 62 days prior to the time the application for the increase is filed with the board.

c. Standardized notice.

(1) Rate-regulated utilities. Any rate-regulated utility company may use the following forms for notification of its customers without seeking prior board approval. If the utility is asking for a general and interim increase, it should use Form A below. If the utility is asking for only a general increase, it should use Form B below.

Form A

Dear Customer:

(Company Name) (We) are asking the Iowa Utilities Board for an increase in (type of service) utility (rates) (and) (charges) with a proposed effective date of (date).

The proposed increase in annual revenues will be approximately $(number), or (number)%.

Although the effect of the proposed increase on your bill may vary depending upon the type and extent of usage, the (average monthly increase per customer for the primary customer classes) (and) (actual increase in nonrecurring charges per customer) (is) (are):

(Charges) (Customer Class)	Current (Charge) (Monthly Rate)	+	Proposed Increase	=	Proposed (Charge) (Monthly Rate)	Percentage Increase

This proposed increase in (rates) (and) (charges) may be docketed by the Board, which suspends the effective date of the proposed (rates) (and) (charges). If the proposed (rates) (and) (charges) are suspended, we are asking the Board for temporary authority to place into effect the following interim increase (collected subject to refund), to be effective (date). The Board may set interim (rates) (and) (charges) other than these:

Proposed Interim Rate Increase

(Charges) (Customer Class)	Current (Charge) (Monthly Rate)	+	Proposed Increase	=	Proposed (Charge) (Monthly Rate)	Percentage Increase

After a thorough investigation, the Board will order final (rates) (and) (charges) which may be different from those proposed, and determine when the (rates) (and) (charges) will become effective. If the final (rates) (and) (charges) are lower than the interim (rates) (and) (charges), the difference between the final and interim (rates) (and) (charges) will be refunded with interest.

You have the right to file a written objection to this proposed increase with the Board and to request a public hearing. The address of the Board is: Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. The Board should be provided with any facts that would assist it in determining the justness and reasonableness of this requested increase. This information will be made available to the Consumer Advocate, who represents the public interest in rate cases before the Board.

A written explanation of all current and proposed rate schedules is available without charge from your local business office. If you have any questions, please contact your local business office.

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Form B

Dear Customer:

(Company Name) (We) are asking the Iowa Utilities Board for an increase in (type of service) utility (rates) (and) (charges) with a proposed effective date of (date).

The proposed increase in annual revenues will be approximately $(number), or (number)%.

Although the effect of the proposed increase on your bill may vary depending upon the type and extent of usage, the (average monthly increase per customer for the primary customer classes) (and) (actual increase in nonrecurring charges per customer) (is) (are):

(Charges) (Customer Class)	Current (Charge) (Monthly Rate)	+	Proposed Increase	=	Proposed (Charge) (Monthly Rate)	Percentage Increase

This proposed increase in (rates) (and) (charges) may be docketed by the Board, which suspends the effective date of the proposed (rates) (and) (charges). After a thorough investigation, the Board will order final (rates) (and) (charges) which may be different from those we requested. These final (rates) (and) (charges) will become effective at a date set by the Board.

You have the right to file a written objection to this proposed increase with the Board and to request a public hearing. The address of the Board is Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. The Board should be provided with any facts that would assist it in determining the justness and reasonableness of this requested increase. This information will be available to the Consumer Advocate, who represents the public interest in rate cases before the Board.

A written explanation of all existing and proposed rate schedules is available without charge from your local business office. If you have any questions, please contact your local business office.

(2) Utilities not subject to rate regulation. A utility not subject to rate regulation may use the following form for notification of its customers without seeking prior board approval.

Dear Customer:

On (date), (responsible party) approved an increase in (rates) (and) (charges) affecting prices for (type of service) that you receive. The increase will apply to your usage beginning on (date).

The increase in annual revenues will be approximately $(number), or (number)%.

Although the effect of the increase on your bill may vary depending upon the type and extent of usage, the (average monthly increase per customer for the primary customer classes) (and) (actual increase in nonrecurring charges per customer) (is) (are):

(Charges) (Customer Class)	Current (Charge) (Monthly Rate)	+	Proposed Increase	=	(Charge) (Monthly Rate)	Percentage Increase

A written explanation of all current rate schedules is available without charge from our local business office. If you have any questions, please contact our business office.

(3) General requirements for a form notice. The standardized notice provided under this subsection shall be of a type size and of a quality which is easily legible. A copy of the notice with dates, cost figures, and cost percentages shall be filed with the board at the time of customer notification.

Any utility offering services or systems involving detailed rate schedules must include in its notification to customers a paragraph specifically noting the services or systems for which any increase is proposed and advising customers to contact the utility's local business office for further explanation of the increase.

Any "average" used in the standard form shall be a median average.

d. Other customer notification forms.

(1) Prior approval. Any public utility, as defined in Iowa Code section 476.1, which proposes to increase rates or charges and is not in substantial compliance with the form prescribed in 26.5(1)"c" above, shall submit to the board not less than 30 days before providing notification to its customers in accordance with 26.5(1)"b," ten copies of such proposed notice for approval. The board, for good cause shown, may permit a shorter period for approval of the proposed notice.

(2) Form. The proposed notice as submitted to the board pursuant to 26.5(1)"d"(1) may contain blank spaces for dates, cost figures and cost percentages; however, a copy of the approved notice with dates, cost figures, and cost percentages shall be filed with the board at the time of the customer notification. The form of the notice, as approved by the board, may not be altered in the final form except to include dates, cost figures, and cost percentages reflecting the latest updates. The notice shall be of a type size and of a quality which is easily legible and shall be of the same format as that which was approved by the board.

(3) Required content of notification. The notice submitted for approval pursuant to 26.5(1)"d"(1) shall include, at a minimum, all of the information contained in the standard notice of 26.5(1)"c."

(4) Notice of deficiencies. Within 30 days of the proposed notice's filing, the utility shall be notified of either the approval of the notice or of any deficiencies in the proposed notice. In the event deficiencies are found to exist in the proposed notice, the board will describe the corrective measures necessary to bring the notice into compliance with Iowa Code chapter 476 and board rules. A notice found to be deficient under this rule shall not constitute adequate notice under Iowa Code section 476.6.

(5) Fuel adjustment clause. Nothing in this subsection shall be taken to prohibit a public utility from establishing a sliding scale of rates and charges or from making provision for the automatic adjustment of rates and charges for public utility service, provided that a schedule showing such sliding scale or automatic adjustment of rates and charges is first

filed with the board. Such adjustment factors that result from the sliding scale shall be printed on the customer's bill.

e. Reserved.

f. Delivery of notification.

(1) The notice, as it appears in 26.5(1)"c" or as approved by the board in accordance with 26.5(1)"d," shall be mailed or delivered to all affected customers pursuant to the timing requirements of 26.5(1)"b."

(2) Rate-regulated utilities. Notice of all proposed increases may be mailed to all affected customers. The notice may be mailed with a regularly scheduled mailing of the utility. Notice, except for proposed nonrecurring service charge increases, shall be conspicuously marked, "Notice of proposed rate increase," on the notice itself. If a separate mailing is utilized by a utility for customer notification except for proposed nonrecurring service charge increases, the outside of the mailing shall also be conspicuously marked, "Notice of proposed rate increase."

(3) Utilities not subject to rate regulation. Notice of all increases may be mailed to all affected customers. The notice may be mailed with a regularly scheduled mailing of the utility. Notice of all increases, except nonrecurring service charge increases, shall be conspicuously marked, "Notice of rate increase," on the notice itself. If a separate mailing is utilized by a utility for customer notification of an increase, except a nonrecurring service charge increase, the outside of the mailing shall also be conspicuously marked, "Notice of rate increase." This subparagraph does not apply to municipal utilities.

(4) Failure of the postal service to deliver the notice to any customers shall not invalidate or delay a proposed rate increase proceeding.

(5) After the date the first notice is mailed or delivered to any affected customer and until such rates are resolved in proceedings before the board, any person who requests service and is affected by the proposed increase in rates shall receive a notice specified in paragraph 26.5(1)"b" not later than 60 days after the date of commencement of service to the customer.

(6) Approved notice will be required for each filing proposing an increase that is not directly identifiable with a previous customer notification.

(7) This subrule shall not apply to telephone utilities proposing to increase rates for only interexchange services, excluding EAS and intrastate access services.

26.5(2) Applications filed in accordance with the provisions of Iowa Code section 476.7.

a. Any rate-regulated public utility filing an application with the board requesting a determination of the reasonableness of its rates, charges, schedules, service, or regulations shall submit at the time the application is filed, factual evidence and written argument offered in support of its filing and provided that the public utility is not a rural electric cooperative, it shall also submit affidavits containing testimonial evidence in support of its filing for a general rate increase. All such testimony and exhibits shall be given or presented by competent witnesses, under oath or affirmation, at the proceeding ordered by the board as a result of the application, and the proceeding itself shall be governed by the applicable provisions of 199—Chapter 7 and rule 26.4(476).

b. All of the foregoing requirements shall likewise apply in the event the board shall, on its own motion, initiate a formal proceeding to determine the reasonableness of a public utility's rates, charges, schedules, service, or regulations.

26.5(3) Tariffs to be filed. A rate-regulated public utility shall not make effective any new or changed rate, charge, schedule, or regulation until it has been approved by the board and the board has determined an effective date, except as provided in Iowa Code section 476.6, subsections 11 and 13. If the proposed new or changed rate, charge, schedule, or regulation is neither rejected nor approved by the board, the board will docket the tariff filing as a formal proceeding within 30 days after the filing date. Proposed new or changed rates, charges, schedules, or regulations which contain energy efficiency expenditures and related costs which are incurred after July 1, 1990, for demand-side programs shall not be included in a rate-regulated utility's proposed tariff which relates to a general increase in revenue. A utility may propose to recover the costs of process-oriented industrial assessments not related to energy efficiency as defined in rule 199—35.2(476). The filing is not a contested case proceeding under the Iowa administrative procedure Act unless and until the board dockets it as a formal proceeding. No person will be permitted to participate in the filing prior to docketing, except that the consumer advocate and any customer affected by the filing, except as limited by 199—subrules 22.12(1) and 22.13(1), may submit within 20 days after the filing date a written objection to the filing and a written request that the board docket the filing, which request the board may grant in its discretion. Such written objections and requests for docketing shall set forth specific grounds relied upon in making the objection or request.

26.5(4) Letter of transmittal. Three copies of all tariffs and all additional, original, or revised sheets of tariffs and the accompanying letter of transmittal shall be filed with the board and shall include or be accompanied with such information as is necessary to explain the nature, effect, and purpose of the tariff or additional, original, or revised sheets submitted for filing. Such information shall include, when applicable:

a. The amount of the aggregate annual increase or decrease proposed.

b. The names of communities affected.

c. The number and classification of customers affected.

d. A summary of the reasons for filing and such other information as may be necessary to support the proposed changes.

e. A marked version of the pages to be changed or superseded showing additions and deletions, if the tariff is prepared with word processing software supporting such marking. All new language must be marked by highlight, background shading, bold text, or underlined text. Deleted language must be indicated by strike-through. The marked version may be in either paper or electronic form and may be prepared manually or by word processing. When a marked version is infeasible or not meaningful, the letter or transmittal should state the reason for its omission.

26.5(5) Evidence. Unless otherwise authorized by the board in writing prior to filing, a utility must when proposing changes in tariffs or rate schedules, which changes relate to a general increase in revenue, prepare and submit with its proposed tariff the following evidence in addition to the information required in 26.5(8). The board shall act on requests for waivers not later than 14 days after filing of those requests. If no action is taken on a request for waiver, it shall be deemed denied.

a. Factors relating to value. A statement showing the original cost of the items of plant and facilities, for the beginning and end of the last available calendar year, any other factors relating to the value of the items of plant and facilities the utility deems pertinent to the board's consideration, together

with information setting forth budgeting accounts for the construction of scheduled improvements.

b. Comparative operating data. Information covering the latest available calendar year immediately preceding the filing date of the application.

(1) Operating revenue and expenses by primary account.

(2) Balance sheet at beginning and end of year.

c. Test year and pro forma income statements. Schedules setting forth revenues, expenses, net operating income of the last available calendar year, the adjustment of unusual items, and by adjustment to reflect operations for a full year under existing and proposed rates.

d. Additional evidence for rural electric cooperatives. In addition to the foregoing evidence, a rural electric cooperative shall file schedules setting forth utility long-term debt and debt costs, accrued utility operating margins and other components of patronage capital, the cooperative's plan to refund utility patronage credits, the ratio of utility long-term debt to retained utility operating margins, the times interest earned ratio, the debt service coverage, authorized utility construction programs, utility operating revenues from base rates, and utility operating revenues from power cost adjustment clauses.

e. Additional evidence for investor-owned utilities. In addition to the foregoing evidence, an investor-owned utility shall file, at the same time the proposed increase is filed, the following information. For the purposes of these rules, "year of filing" means the calendar year in which the filing is made. Unless otherwise specified in these rules, the information required shall be based upon the calendar year immediately preceding the year of filing.

(1) Rate base for both total company and Iowa jurisdictional operations calculated by utilizing a 13-month average of month-ending balances ending on December 31 of the year preceding the year of filing, and also calculated on a year-end basis, except for the cash working capital component of this figure, which will be computed on the basis of a lead-lag study as set forth in subparagraph (5).

The rate base for the Iowa jurisdictional operations of rate-regulated telephone utilities will be computed on the basis of actual month-end balances which have been verified and adjusted to reflect the results of true-up procedures. True-up is the comparison of actual usage for each deregulated service with any previous estimates of deregulated usage for a given time period for the purpose of adjusting rate base and income statement allocations between deregulated and regulated services. Trued-up month-end balances for each deregulated service will be completed through the end of the test year prior to the date of filing a general rate case.

(2) Revenue requirements for both total company and Iowa jurisdictional operations to include: operating and maintenance expense, depreciation, taxes, and return on rate base. The Iowa jurisdictional expenses of rate-regulated telephone utilities will be adjusted to reflect allocation factors which have been computed as a result of actual month-end balances which have been verified and adjusted to reflect the results of true-up procedures. True-up is the comparison of actual usage for each deregulated usage for a given time period for the purpose of adjusting rate base and income statement allocations between deregulated and regulated services. Trued-up month-end balances for each deregulated service will be completed through the end of the test year prior to the date of filing a general rate case.

(3) Capital structure calculated utilizing a 13-month average of month-ending balances ending on December 31 of the year preceding the year of filing, and also calculated on a year-end basis.

(4) Schedules supporting the proposed capital structure, schedules showing the calculation of the proposed capital cost for each component of the capital structure and schedules showing requested return on rate base with capital structure and corresponding capital cost.

(5) Cash working capital requirements, including a recent lead-lag study which accurately represents conditions during the test period. For the purposes of this rule, a lead-lag study is defined as a procedure for determining the weighted average of the days for which investors or customers supply working capital to operate the utility.

(6) Complete federal and state income tax returns for the two calendar years preceding the year of filing and all amendments to those returns. If a tax return or amendment has not been prepared at the time of filing, the return shall be filed with the board under this subrule at the time it is filed with the Internal Revenue Service or the state of Iowa department of revenue.

(7) Schedule of monthly Iowa jurisdictional expense by account as required by chapter 16 of the board's rules unless, upon application of the utility and prior to filing, the board finds that the utility is incapable of reporting jurisdictional expense on a monthly basis and prescribes another periodic basis for reporting jurisdictional expense.

(8) For gas, electric and water utilities, a schedule of monthly consumption (units sold) and revenue by customer-rate classes, reflecting separately revenue collected in base rates and adjustment clause revenues. For telephone companies, a rate matrix as set forth in the company's annual report (page B-16), shall be filed along with a statement of the total amount of revenue produced under the rate matrix.

(9) Schedules showing that the rates proposed will produce the revenues requested. In addition to these schedules, the utility shall submit in support of the design of the proposed rate a narrative statement describing and justifying the objectives of the design of the proffered rate. If the purpose of the rate design is to reflect costs, the narrative should state how that objective is achieved, and should be accompanied by a cost analysis that would justify the rate design. If the rate design is not intended to reflect costs, a statement should be furnished justifying the departure from cost-based rates. This filing shall be in compliance with all other rules of the board concerning rate design and cost studies.

(10) All monthly or periodic financial and operating reports to management beginning in January two years preceding the year of filing. The item or items to be filed under this rule include: (a) reports of sales, revenue, expenses, number of employees, number of customers, or similar data; (b) related statistical material. This requirement shall be a continuing one, to remain in effect through the month that the rate proceeding is finally resolved. Notwithstanding other provisions concerning the number of copies to be filed, one copy of each report shall be filed under this rule.

(11) Schedule of monthly tax accruals separated between federal, state, and property taxes, including the methods used to determine these amounts.

(12) Allocation methods, including formulas, supporting revenue, expense, plant or tax allocations.

(13) Schedule showing interest rates, dividend rates, amortizations of discount and premium and expense, and unamortized 13 monthly balances of discount and premium and expense, ending on December 31 of the year preceding the year of filing, for long-term debt and preferred stock.

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(14) Schedule showing the 13 monthly balances of capital stock expense associated with common stock, ending on December 31 of the year preceding the year of filing.

(15) Schedule showing the 13 monthly balances of capital surplus, separated between common and preferred stock, ending on December 31 of the year preceding the year of filing. For the purpose of this rule, capital surplus means amounts paid in that are less than or are in excess of par value of the respective stock issues.

(16) Stockholders' reports, including supplements for the year of filing and the two preceding calendar years. If such reports are not available at the time of filing, they shall be filed immediately upon their availability to stockholders.

(17) If applicable, securities and exchange commission Form 10Q for all past quarters in the year of filing and the preceding calendar year, and Form 10K for the two preceding calendar years. If these forms have not been filed with the Securities and Exchange Commission at the time the rate increase is filed, they shall be filed under this subrule immediately upon filing with the Securities and Exchange Commission. This requirement is not applicable for any such reports which are routinely and formally filed with the board.

(18) Any prospectus issued during the year of filing or during the two preceding calendar years.

(19) Consolidated and consolidating financial statements.

(20) Revenue and expenses involving transactions with affiliates and the transfer of assets between the utility and its affiliates.

(21) A schedule showing the following for each of the 15 calendar years preceding the year of filing, and for each quarter from the first quarter of the calendar year immediately preceding the year of filing through the current quarter.

Earnings, annual dividends declared, annual dividends paid, book value of common equity, and price of common equity (each item should be shown per average actual common share outstanding, adjusted for stock splits and stock dividends).

Rate of return to average common equity.

Common stock earnings retention ratio.

For common stock issued pursuant to tax reduction act stock ownership plans, employee stock option plans, and dividend reinvestment plans: net proceeds per common share issued, and number of shares issued and previously outstanding at the beginning of the year. This shall be set forth separately for each of the three types of plans, and reported as annual aggregates or averages.

For other issues of common stock: net proceeds per common share issued, and number of shares issued and previously outstanding for each issue of common stock.

(22) If the utility is applying for a gas rate increase, a schedule for weather normalization, including details of the method used.

(23) All testimony and exhibits in support of the rate filing attached to affidavits of the sponsoring witnesses. All known and measurable changes in costs and revenues upon which the utility relies in its application shall be included.

Unless otherwise required, an original plus ten copies of all testimony and exhibits, and four copies of all other information, shall be filed. Three copies of each of the preceding items shall be provided to the consumer advocate. In addition, two electronic copies of each computer-generated exhibit which complies with the standards in 199—7.7(476) and two copies of a brief description of the software and hardware requirements of noncomplying electronic copies of computer-generated exhibits shall be filed with the board and the consumer advocate. Two copies of the noncomplying electronic copies shall be provided upon request by any party or the board.

If the utility which has filed for the rate increase is affiliated with another company as either parent or subsidiary, the information required in subparagraphs (3), (4), (6), (13) to (19), and (21) shall be provided for the parent company (if any) and for all affiliates which are not included in the consolidating financial statements filed pursuant to this rule.

(24) Information relating to advertisements including:

1. A portfolio of all advertisements charged to ratepayers either produced, recorded or a facsimile thereof;

2. Cost data for all advertisements and the accounting treatment utilized; and

3. An account of total advertising expense including a breakdown of the expense by category.

f. All rate-regulated utilities shall submit at the time of filing an application for increased rates, all workpapers used to prepare the analysis and data submitted in support of the application. All workpapers shall substantially comply with the standards in 199—subrule 7.10(5).

g. Additional evidence. The applicant may submit any other testimony, schedules, exhibits, and data which it deems pertinent to the application.

(1) Additional evidence may include:

1. Testimony, schedules, exhibits, and data concerning the cost of capital infrastructure investment that will not produce significant revenues and will be in service in Iowa within nine months of the test year.

2. Testimony, schedules, exhibits, and data concerning cost of capital changes that will occur within nine months after the conclusion of the test year that are associated with a new generating plant that has been the subject of a ratemaking principles proceeding pursuant to Iowa Code section 476.53.

(2) The utility shall specifically identify and support the information, including providing an estimate at the time of filing and addressing prudence issues, regarding the changes that will be verifiable within nine months of the test year, with such verification provided to other parties as soon as the data is available. To be considered, the verifiable information must be offered into the record prior to the closing of the record at the hearing in the proceeding.

(3) A utility electing to file additional evidence under this paragraph shall include in the reports required in subparagraph 26.5(5)"e"(1) any capital infrastructure investments that will not produce significant revenues and have been placed in service in Iowa, or capital issuances that have been completed that are associated with a new generating plant that has been the subject of a ratemaking principles proceeding pursuant to Iowa Code section 476.53.

(4) A utility electing to file additional evidence under this paragraph shall provide additional schedules as required by subparagraphs 26.5(5)"e"(13), (14), and (15) related to capital issuances that have been completed that are associated with a new generating plant that has been the subject of a ratemaking principles proceeding pursuant to Iowa Code section 476.53.

Subparagraphs 26.5(5)"g"(1) through (4) are repealed effective July 1, 2007. However, any proceeding that is pending on July 1, 2007, that is being conducted pursuant to Iowa Code section 476.3 or 476.6 shall be completed as if subparagraphs 26.5(5)"g"(1) through (4) had not been repealed. Upon repeal of subparagraphs 26.5(5)"g"(1) through (4), the

board may still consider the adjustments addressed in those subparagraphs, but shall not be required to consider them.

26.5(6) Evidence requested by the board. The applicant shall furnish any additional evidence as ordered by the board at any time after the filing of the tariff.

26.5(7) Applications pursuant to Iowa Code section 476.6 that are not general rate increase applications. At the time a rate-regulated public utility, other than a rural electric cooperative, files for new or changed rates, charges, schedules, or regulations except in conjunction with general rate increase applications, it shall submit the following:

a. Any cost, revenue, or economic data underlying the filing.

b. An explanation of how the proposed tariff would affect the rates and service of the public utility.

c. All testimony and exhibits in support of the filing attached to affidavits of the sponsoring witnesses.

26.5(8) Requests for temporary authority pursuant to Iowa Code section 476.6.

a. A request for temporary authority to place in effect any suspended rates, charges, schedules, or regulations shall be separately identified and shall include:

(1) For each adjustment or issue, a brief explanation of the adjustment or issue and its purpose which includes the specific regulatory principles relied on to support the adjustment or issue and citations to either the rules, statutes, or decisions in which the regulatory principle was codified or previously applied.

(2) Schedules supporting the proposed temporary rate capital structure, schedules showing the calculation of the proposed capital cost for each component of the capital structure, and schedules showing requested return on rate base with capital structure and corresponding capital cost.

(3) All workpapers supporting the request for temporary authority. The workpapers shall substantially comply with the standards in 199—subrule 7.10(5).

b. Within 30 days of the filing of a request for temporary authority, an objection may be filed. An objection to a request for temporary authority shall separately identify each disputed adjustment or issue and shall include:

(1) A brief explanation of the basis for the disputed adjustment or issue which includes the specific regulatory principles relied on and citations to either the rules, the statutes, or decisions in which the regulatory principle was codified or previously applied.

(2) All workpapers supporting the objection to the request for temporary authority. The workpapers shall substantially comply with the standards in 199—subrule 7.10(5).

c. Within 15 days of the filing of the objection, the utility may file a reply.

d. For this rule, the following filing requirements apply:

(1) Request for temporary authority—original plus ten copies.

(2) Objections to request—original plus ten copies.

(3) Replies—original plus ten copies.

(4) Exhibits—original plus ten copies. In addition, two electronic copies of each computer-generated exhibit shall be filed. Only electronic copies of computer-generated exhibits that comply with 199—7.7(476) shall be filed.

(5) Electronic workpapers—two copies and two hard-copy printouts.

(6) Other workpapers—five copies.

(7) Specific studies or financial literature—two copies. In addition, three copies of each document filed shall be provided to consumer advocate.

199—26.6(476) Answers.

26.6(1) Time for. Answers to applications for new or changed rates, charges, schedules, or regulations shall be permitted only if and when the application is docketed as a formal proceeding by the board, and shall be filed with the board within 20 days after the date of docketing. All answers must specifically admit, deny or otherwise answer all material allegations of the pleadings and also briefly set forth the affirmative grounds relied upon to support such answer; except that a party's failure to file an answer to an application for new or changed rates, charges, schedules, or regulations will be deemed a denial of all allegations of the application.

26.6(2) Motion to dismiss. Motions to dismiss applications for new or changed rates, charges, schedules, or regulations shall be permitted only if and when the application is docketed as a formal proceeding by the board.

199—26.7(476) Rate investigation. The board shall commence a rate investigation upon the motion of the general counsel or the consumer advocate alleging that a rate-regulated utility's annual report, a special audit, or an investigation by the board staff or the consumer advocate, indicates that the earnings of that public utility may have been or will be excessive. The board may also commence a rate investigation upon the motion of any interested person.

199—26.8(476) Procedural schedule in Iowa Code sections 476.3 and 476.6 proceedings.

26.8(1) In any proceeding initiated as a result of the filing by a public utility of new or changed rates, charges, schedules or regulations, the utilities board or presiding officer shall set a procedural schedule based on the following guidelines, unless otherwise ordered by the utilities board or presiding officer pursuant to this rule. The times and places of consumer comment hearings shall be set at the discretion of the utilities board or presiding officer.

Prepared direct testimony and exhibits in support of the filing—date of initial filing.

Docket case as a formal proceeding, suspend effective date of new or changed rates, charges, schedules or regulations and establish procedural schedule—not later than 30 days from the date of initial filing.

All further testimony—completed not later than six months from date of initial filing.

Cross-examination of all testimony—completed not later than seven months from date of initial filing.

Briefs of all parties—filed not later than eight and one-half months from date of initial filing.

26.8(2) In a proceeding initiated as a result of the filing of a complaint pursuant to Iowa Code section 476.3, the utilities board or presiding officer shall set a procedural schedule based on the following guidelines, unless otherwise ordered by the utilities board or presiding officer pursuant to this rule.

Prepared direct testimony and exhibits in support of the filing—date of initial filing.

Docket case as a formal proceeding to suspend effective date of new or changed rates, charges, schedules or regulations and establish procedural schedule—not later than 30 days from the date of initial filing.

All further testimony—completed not later than six months from date of initial filing.

Cross-examination of all testimony—completed not later than seven months from date of initial filing.

Briefs of all parties—filed not later than eight and one-half months from date of initial filing.

26.8(3) In setting the procedural schedule in a case, the board or administrative law judge shall take into account the existing hearing calendar and shall give due regard to other

obligations of the parties, attorneys and witnesses. The board or administrative law judge may on its own motion or upon the motion of any party, including consumer advocate, for good cause shown change the time and place of any hearing. Any effect such a change has on the remainder of the procedural schedule or the deadline for decision shall be noted when the change is ordered.

26.8(4) Additional time may be granted a party, including consumer advocate, upon a showing of good cause for the delay, including but not limited to:

a. Delay of completion of previous procedural step.

b. Delays in responding to discovery or consumer advocate data requests.

Any effect such an extension has on the remainder of the procedural schedule or the deadline for decision shall be noted in the motion for extension and the board order granting the extension.

26.8(5) If any party, including consumer advocate, wishes to utilize the electric generating facility exception to the ten-month decision deadline contained in Iowa Code section 476.6, it shall expeditiously file a motion seeking this exception including an explanation of that portion of the suspended rates, charges, schedules or regulations necessarily connected with the inclusion of the generating facility in rate base. Any other party may file a response to such a motion.

199—26.9(476) Consumer comment hearing in docketed rate case of an investor-owned utility company. The board shall hold consumer comment hearings to provide an opportunity for members of the general public who are customers of an investor-owned utility company involved in a docketed rate case to express their views regarding the case before the board as well as the general quality of service provided by the utility. However, specific service complaints must follow the procedure prescribed in 199—6.2(476). Nothing shall prohibit the board from holding consumer comment hearings on any other docketed rate case.

26.9(1) The consumer comment hearing will be presided over by either the board member(s) or an administrative law judge assigned by the board. Representatives from the utility company shall be present to explain, in a concise manner, the pertinent points of the company's proposal. The company's representatives shall also respond to any questions directed to them. All representatives from the utility company that are participating, except for legal counsel, shall be under oath. All board staff members that are participating in the hearing shall be under oath.

26.9(2) Individuals who wish to testify at the consumer comment hearing need not preregister with the board but need only sign up at the time of the hearing. The board member(s) or administrative law judge may limit the length of testimony when a large number of persons wish to testify. Sworn testimony shall become a part of the permanent record of the rate proceeding.

26.9(3) All participants in the hearing may correct misinformation within testimony. Correction of misinformation may be made at the time of the hearing during oral presentation or, if the misinformation does not come to the attention of the participants until after the hearing, correction of misinformation may be submitted in writing to the board within 20 days after the oral presentation. Written submissions shall be limited to a statement identifying the party whose testimony is to be corrected, and a brief statement of the incorrect testimony. This shall be followed by a brief statement of the correct information. This procedure shall be utilized to correct only such information that is clearly erroneous. Written submissions of corrections of misinformation shall not be used to slant, clarify or add to the testimony given during oral presentation. Corrections of misinformation which comply with this rule shall become a part of the permanent record.

The consumer comment hearing is not an appropriate forum for any party to make a record for or against the rate case.

26.9(4) The consumer comment hearing shall be held in a major population center served by the utility company at a time of day convenient to the largest number of customers. It shall be conducted in a facility large enough to accommodate all who wish to attend. Notice of the consumer comment hearing shall be sent by the board's public information office to newspapers, radio, and television stations in the area served by the utility company.

26.9(5) Individuals unable to attend a consumer comment hearing may submit written comments to the board. Written comments shall become part of the permanent file of the rate proceeding, but not part of the record as sworn testimony.

26.9(6) Consumer comment hearing may be waived by the board if the interests of the public are better served without a hearing.

This rule is intended to implement Iowa Code sections 474.5, 476.1 to 476.3, 476.6, 476.8, 476.10, 476.31 to 476.33.

199—26.10(476) Appeal from administrative law judge's decision. When an appeal is taken from an administrative law judge's decision determining the reasonableness of rates after formal docketing of the proceeding pursuant to Iowa Code section 476.6, the filing of a notice of appeal in compliance with this rule may be deemed a request for additional time to complete the proceeding, for good cause shown and, if the board so determines, shall extend the date when any rates approved on a temporary basis become permanent for a period not to exceed one-half of the additional time, shown in the procedural schedule, for a final board decision on the appeal.

199—26.11(476) Consideration of current information in rate regulatory proceedings.

26.11(1) Test period. In rate regulatory proceedings under Iowa Code sections 476.3 and 476.6, the board shall consider the use of the most current test period possible in light of existing and verifiable data respecting costs and revenues available as of the date of commencement of the proceedings.

26.11(2) Known and measurable changes. In rate regulatory proceedings under Iowa Code sections 476.3 and 476.6, the board shall consider:

a. Verifiable data, existing as of the date of commencement of the proceedings, respecting known and measurable changes in costs not associated with a different level of revenue and known and measurable revenues not associated with a different level of costs, that are to occur within 12 months after the date of commencement of the proceedings.

b. Data which becomes verifiable prior to the closing of the record at the hearing respecting known and measurable:

(1) Capital infrastructure investments that will not produce significant additional revenues and will be in service in Iowa within nine months after the conclusion of the test year.

(2) Cost of capital changes that will occur within nine months after the conclusion of the test year that are associated with a new generating plant that has been the subject of a ratemaking principles proceeding pursuant to Iowa Code section 476.53.

Verifiable data filed pursuant to paragraph 26.11(2)"b" shall be provided to other parties as soon as the data is available so that other parties have a reasonable opportunity to verify the data to be considered by the board.

Paragraph 26.11(2)"b" is repealed effective July 1, 2007. However, any proceeding that is pending on July 1, 2007, that is being conducted pursuant to Iowa Code section 476.3 or 476.6 shall be completed as if paragraph 26.11(2)"b" had not been repealed. Upon repeal of paragraph 26.11(2)"b," the board may still consider the adjustments addressed in the paragraph, but shall not be required to consider them.

26.11(3) Postemployment benefits other than pensions. For rate-making purposes, the amount accrued for postemployment benefits other than pensions in accordance with Financial Accounting Standard No. 106 will be allowed in rates where:

a. The net periodic postemployment benefit cost and accumulated postemployment benefit obligations have been determined by an actuarial study completed in accordance with the specific methods required and outlined by SFAS No. 106.

b. The accrued postemployment benefit obligations have been funded in a board-approved, segregated and restricted trust account, or alternative arrangements have been approved by the board. Cash deposits shall be made to the trust at least quarterly in an amount that is proportional and, on an annual basis, at least equal to the annual test period allowance for postemployment benefits other than pensions.

c. The transition obligation is amortized over a period of time determined by the board that does not exceed 20 years.

d. Any funds, including income, returned to the utility from the trust not actually used for postemployment benefits other than pensions shall be refunded to customers in a manner approved by the board.

e. The board finds the benefit program and all calculations are prudent and reasonable.

26.11(4) An actuarial study of the net periodic postemployment benefit cost and accumulated postemployment benefit obligations shall be determined and filed with the board at the time a rate increase is requested, when there has been a change in postemployment benefits other than pensions offered by the utility, or every three years, whichever comes first.

26.11(5) For a period not to exceed three years commencing January 1, 1993, a rate-regulated utility may record on its books each year as a deferral the difference between the amount accrued in accordance with SFAS 106 and the amount which would have been recorded for postemployment benefits other than pensions on a pay-as-you-go basis for that year. In calculating the amount to be deferred, the utility may include in the deferral the amortization of transition obligation costs in accordance with SFAS 106.

26.11(6) Recovery of the deferrals authorized in subrule 26.11(5) will be considered only in rate cases filed prior to December 31, 1995.

This rule is intended to implement Iowa Code sections 476.1 to 476.3, 476.6, 476.8, 476.10 and 476.31 to 476.33.

199—26.12(476) Rate regulation election—electric cooperative corporations and associations.

26.12(1) Application of rules. Electric cooperative corporations and associations shall not be subject to the jurisdiction of the utilities board except as provided in Iowa Code section 476.1A and paragraphs "a," "b," and "c" of this subrule.

a. Procedure for election by members. Upon petition of not less than 10 percent of the members of an electric cooperative or upon its own motion, the board of directors of an electric cooperative shall order a referendum election to be held to determine whether the electric cooperative shall be subject to the jurisdiction of the utilities board. A petition for election shall be completed within 60 days of commencement.

(1) Any member of an electric cooperative desiring a referendum election shall sign a petition for election addressed to the board of directors of an electric cooperative, in substantially the following form:

PETITION FOR ELECTION

TO: (Board of Directors of subject electric cooperative)

The undersigned members request you call an election to submit to the members the following proposition:

Shall . . . (name of the electric cooperative) be subject to rate regulation by the utilities board?

Signature Address Date

(2) Where signatures are made on more than one sheet, each sheet of the petition shall reproduce above the signatures the same matter as is on the first sheet. Each petitioner shall sign their name in their own handwriting and shall write their address and the date on which they signed.

(3) The petition shall be filed with the board of directors of the electric cooperative and an election shall be held not less than 60 days nor more than 90 days from the date on which the petition was filed.

(4) On the election date, the board of directors of the electric cooperative shall mail by first-class mail to each member of the electric cooperative a ballot containing the following language:

Shall . . . (name of the electric cooperative) be subject to rate regulation by the utilities board?

☐ Yes ☐ No

(5) The ballot shall also contain a self-addressed envelope to return the ballot to the secretary of the board of directors of the electric cooperative. The ballot shall be dated when received by the secretary. The ballot must be received by the secretary not more than 30 days after it was mailed to the members. The election procedure shall require a signature form for verification, but shall not allow the signature to be traced to the vote of a particular member.

(6) The issue in the election shall be decided by a majority of the members voting whose ballots are received by the secretary. Fifty-one percent of the membership shall constitute a quorum for the election. The secretary shall certify the results of the election and file the results with the executive secretary of the utilities board within 30 days of the election.

b. Procedure for election by board. Upon the resolution of a majority of the board of directors of an electric cooperative, the board may elect to be subject to the jurisdiction of the utilities board. The secretary of the board of directors of the electric cooperative shall file a certified copy of the resolution with the executive secretary of the utilities board within 30 days of the adoption of the resolution.

c. Effective date. Upon the resolution of a majority of the board of directors of an electric cooperative or when a majority of the members voting vote to place the cooperative under the jurisdiction of the utilities board, the utilities board shall determine an effective date of its jurisdiction which shall be not more than 90 days from the election. On and after the effective date of jurisdiction, the cooperative shall be subject to regulation by the utilities board.

d. Prohibited acts. Funds of an electric cooperative shall not be used to support or oppose the issue presented in the election. Nothing shall prohibit a letter of explanation and direction from being enclosed with the ballot.

e. Procedure for exemption. After the cooperative has been under the jurisdiction of the utilities board for two years, the members may elect to remove the cooperative

from under the jurisdiction of the utilities board in the same manner as when electing to be placed under the jurisdiction of the utilities board.

f. Frequency of election. An electric cooperative shall not conduct more than one election pursuant to this subsection within a two-year period.

26.12(2) Rate increase considerations—rural electric cooperatives. The board's consideration of the fair and reasonable level of rates necessary for rural electric cooperatives shall include the following:

a. After investigation of the historical test year results and pro forma adjustments thereto, the board shall determine the extent to which the applicant has met the following conditions:

(1) Revenues are sufficient for a times interest earned ratio of from 1.5 to 3.0 for coverage of interest on outstanding utility short-term and long-term debt; or

(2) Revenues are sufficient for a debt service coverage ratio of from 1.25 to 2.50 on utility long-term debt; or

(3) Utility operating margins are sufficient for a ratio of from 1.5 to 2.5 of utility operating margins to interest on utility short-term and long-term debt; or

(4) Utility operating margins are sufficient for a ratio of from 1.25 to 1.75 of utility operating margins plus utility depreciation, all divided by utility long-term interest plus principal; and

(5) Utility operating margins are sufficient to return utility patronage capital credits accumulated from utility operating margins, with a retention of such credits of no more than 20 years allowed, subject to modification where compelling circumstances require time period adjustments.

b. In addition to the information in "a" above, evidence of the necessity for the requested rate relief may include, but need not be limited to, utility operating margins which will enable the cooperative to attain and maintain a reasonable ratio of utility long-term debt to retained utility operating margins. Cooperative's authorized construction program and an official policy statement of its board of directors on a desired ratio will be considered factors in the determination of the reasonableness of any such ratio.

c. The utilities board's initial decision will become final 15 days following its date of issuance; however, if filed within that 15-day period, allegations of error by the cooperative, staff or any intervenor as to the utilities board's findings of fact, together with a statement of readiness to present testimony, will serve to hold final disposition in abeyance pending the scheduling and completion of an evidentiary hearing. When such allegation is made, testimony in support of such position must be filed within 30 days of such filing. Upon receipt of the testimony, the utilities board will schedule additional filing dates and set the matter for hearing. When hearing is scheduled, final disposition of the rate proceeding will be accomplished under the contested case provisions of the Iowa administrative procedure Act and the utilities board's rules and regulations thereunder.

These rules are intended to implement Iowa Code sections 474.3, 474.5, 474.6, 476.1 to 476.3, 476.6, 476.8 to 476.10, 476.15, 476.31 to 476.33 and 546.7.

ITEM 3. Amend 199—subrule 32.9(4) as follows:

32.9(4) Intervention. Notwithstanding the provisions of 199 ~~IAC 7.2(8)~~ *—subrule 7.13(1)* regarding the time to petition to intervene, a party may petition to intervene subsequent to the filing of an application for reorganization, but no later than a date for intervention established by the board in a notice of hearing.

ARC 3979B

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 8A.104, the Department of Administrative Services hereby amends Chapter 40, "Offset of Debts Owed State Agencies," Iowa Administrative Code.

This amendment to rule 11—40.13(8A), which establishes provisions of the judicial offset notice, corrects a cross reference to a chapter of rules of the former Department of General Services pertaining to appeals procedures. That chapter was rescinded effective June 16, 2004; this amendment inserts the correct reference to the Department's contested case rules, 11—Chapter 7.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary and impracticable because of the immediate need to correct this reference.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and this amendment should be made effective immediately upon filing with the Administrative Rules Coordinator. This amendment confers a benefit to the public by providing the correct reference to the Department's procedures involved with contesting the right of offset or the validity of such offset of a payment owed to a clerk of the Iowa district court.

The Department of Administrative Services adopted this amendment January 19, 2005.

This amendment is intended to implement Iowa Code section 8A.504.

This amendment became effective January 19, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is adopted.

Amend rule **11—40.13(8A)**, numbered paragraph **"5,"** as follows:

5. The right of the person liable to contest the right of offset and the validity of such offset with the department by mailing, to the department's legal counsel, a protest within 15 days of the mailing of such notice, and that the procedure to follow in that appeal will conform, according to the context, to the rules of the department involving protests and contested case proceedings in ~~401—Chapter 6~~ *11—Chapter 7*.

[Filed Emergency 1/19/05, effective 1/19/05]
[Published 2/16/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/16/05.

ARC 3982B

ACCOUNTANCY EXAMINING BOARD[193A]

Adopted and Filed

Pursuant to the authority of Iowa Code section 542.4, the Accountancy Examining Board hereby amends Chapter 1, "Definitions," Chapter 3, "Certification of CPAs," Chapter 4, "Licensure of LPAs," Chapter 5, "Renewal of Certificates and Licenses," Chapter 7, "Certified Public Accounting Firms," Chapter 8, "Licensed Public Accounting Firms," Chapter 10, "Continuing Education," Chapter 13, "Rules of Professional Conduct," and Chapter 15, "Disciplinary Investigations," Iowa Administrative Code.

The amendments to Chapter 1 adopt new definitions for terms used in amendments to Chapter 15 of these rules. The amendments to Chapter 3 clarify requirements for issuance of a certificate as a CPA. The amendments to Chapter 4 allow the use of the services of a test administrator. The amendment to Chapter 5 establishes requirements for reinstatement of a lapsed certificate or license. The amendments to Chapters 7 and 8 establish the guidelines for reinstatement of a lapsed firm permit. The amendments to Chapter 10 adopt new mandatory continuing education requirements. The amendments to Chapter 13 adopt new guidelines for record retention. The amendments to Chapter 15 adopt provisions for confidentiality of complaint and investigative information received from the Public Company Accounting and Oversight Board (PCAOB) created by the Sarbanes-Oxley Act of 2002.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

Notice of Intended Action was public in the December 8, 2004, Iowa Administrative Bulletin as **ARC 3854B**. The Board received three comments from the public. All were in support of the amendments as published. The adopted amendments are identical to those published under Notice.

The amendments were adopted during the January 14, 2005, telephone conference call meeting of the Accountancy Examining Board.

These amendments will become effective March 23, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 1, 3 to 5, 7, 8, 10, 13, 15] is being omitted. These amendments are identical to those published under Notice as **ARC 3854B**, IAB 12/8/04.

[Filed 1/19/05, effective 3/23/05]
[Published 2/16/05]

[For replacement pages for IAC, see IAC Supplement 2/16/05.]

ARC 3992B

ALCOHOLIC BEVERAGES DIVISION[185]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 123.21 and 123.186, the Alcoholic Beverages Division of the Iowa Department of Commerce hereby amends Chapter 16, "Trade Practices," Iowa Administrative Code.

In July 2000, the Alcoholic Beverages Division initiated a rule making to draw a distinction between the ownership interests prohibited by Iowa Code section 123.45 and the remote business connections or passive investment relations that do not pose the risk of market monopoly. The amendment to rule 16.2(123) was Adopted and Filed and published in the November 1, 2000, Iowa Administrative Bulletin as **ARC 0250B**, and became effective on December 6, 2000.

In January 2001, the Iowa Wholesale Beer Distributors Association, together with various wholesale beer distributors, filed a petition for judicial review challenging the amended rule. In the case Dave Auen, et al., v. Alcoholic Beverages Division of the Iowa Department of Commerce, the district court upheld the amendment as a valid exercise of the rule-making authority of the Division. The decision of the district court was later overturned by the Iowa Supreme Court in a ruling that declared the amended rule null and void. This amendment is Adopted and Filed in compliance with the ruling of the Supreme Court.

The Iowa Alcoholic Beverages Commission approved this amendment for adoption by the Administrator of the Division on January 26, 2005. The Administrator adopted the amendment on January 26, 2005.

Notice of Intended Action was published in the December 22, 2004, Iowa Administrative Bulletin as **ARC 3889B**. A public hearing was held on Tuesday, January 11, 2005, in the Board Room, Alcoholic Beverages Division, 1918 SE Hulsizer Road, Ankeny, Iowa 50021. No written or oral comments were received at the hearing. This amendment is identical to that published under Notice.

This amendment is intended to implement the court order issued in the case Dave Auen, et al., v. Alcoholic Beverages Division of the Iowa Department of Commerce.

This amendment will become effective March 23, 2005.

The following amendment is adopted.

Amend rule 185—16.2(123) as follows:

185—16.2(123) Interest in a retail establishment.

16.2(1) An industry member is prohibited, directly or indirectly, from:

a. Acquiring or holding a partial or complete ownership interest in a retail establishment.

b. Acquiring or holding an interest in the real or personal property owned, occupied or used by the retailer in the conduct of the retail establishment.

c. Acquiring a mortgage on the real or personal property owned by the retailer.

d. Guaranteeing any loan or paying a financial obligation of the retailer, including, but not limited to, personal loans, home mortgages, car loans, operating capital obligations, or utilities.

e. Providing financial, legal, administrative or other assistance to a retailer to obtain a license or permit.

~~**16.2(2)** For the purposes of this rule, a subsidiary or an affiliate of an industry member shall not be considered to have any interest in the ownership, conduct or operation of a retailer provided all of the following conditions are satisfied:~~

~~a. The industry member and the retail establishment do not share any common officers or directors.~~

~~b. The industry member does not control the retail establishment.~~

~~c. The industry member is not involved, directly or indirectly, in the operation of the retail establishment.~~

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

~~d. The retail establishment is free from control or interference by the industry member with respect to the retailer's ability to make choices as to the types, brands and quantities of alcoholic beverages purchased and sold.~~

~~e. The retail establishment sells brands of alcoholic beverages that are produced or distributed by competing industry members with no preference given to the industry member that holds a financial interest in the retailer.~~

~~f. There is no exclusion, in whole or in part, of alcoholic beverages sold or offered for sale by competing industry members that constitutes a substantial impairment of commerce.~~

~~g. The retail establishment shall not purchase more than 20 percent of the total annual liquor sales, 20 percent of the total annual wine sales, and 20 percent of the total annual beer sales (measured by gallons) from the industry member.~~

~~h. The primary business of the retail establishment is not the sale of alcoholic beverages.~~

~~i. All purchases of alcoholic beverages by the retail establishment are made pursuant to Iowa's three-tier system as provided for in Iowa Code chapter 123.~~

~~**16.2(3)** A retail establishment shall file verification with the alcoholic beverages division that it is in compliance with the conditions set forth in this rule upon application, renewal or request of the agency.~~

~~**16.2(4)** This rule is not subject to waiver or variance in specific circumstances.~~

This rule is intended to implement Iowa Code sections 123.45 and 123.186.

[Filed 1/27/05, effective 3/23/05]
[Published 2/16/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/16/05.

ARC 4006B

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 11, "Complaints, Investigations, Contested Case Hearings," Iowa Administrative Code.

This amendment revises a cross reference in a rule from Chapter 12, which has been rescinded, to Chapter 25, which has replaced it.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 10, 2004, as **ARC 3770B**. A public hearing on the amendment was held on November 30, 2004. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective March 23, 2005.

The following amendment is adopted.

Amend rule 282—11.37(272), introductory paragraph, as follows:

282—11.37(272) Mandatory reporting of contract nonrenewal or termination or resignation based on allegations of misconduct. The board of directors of a school district or area education agency, the superintendent of a school district or the chief administrator of an area education agency, and the authorities in charge of a nonpublic school shall report to the board the nonrenewal or termination, for reasons of alleged or actual misconduct, of a person's contract executed under Iowa Code sections 279.12, 279.13, 279.15 through 279.21, 279.23, and 279.24, and the resignation of a person who holds a license, certificate, or authorization issued by the board as a result of or following an incident or allegation of misconduct that, if proven, would constitute a violation of 282—~~paragraph 12.2(2)"a,"~~ *subparagraph 25.3(1)"b"(1),* when the board or reporting official has a good-faith belief that the incident occurred or the allegation is true.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/16/05.

ARC 4007B

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 21, "Behind-the-Wheel Driving Instructor Authorization," Iowa Administrative Code.

This amendment is necessary to align the rule with recent changes in Department of Transportation qualifications with regard to a clear driving record.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 10, 2004, as **ARC 3771B**. A public hearing on the amendment was held on November 30, 2004. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective March 23, 2005.

The following amendment is adopted.

Amend subrule 21.1(1) as follows:

21.1(1) Qualifications. To qualify for the behind-the-wheel driving instructor authorization, the applicant must:

a. Be at least 25 years of age.

b. Hold a valid Iowa driver's license that permits unaccompanied driving, other than a motorized bicycle license or a temporary restricted license.

c. Have a clear driving record for the previous ~~four~~ *two* years. A clear driving record means that the individual has:

(1) Not been identified as a candidate for driver's license suspension under the habitual violator provisions of rule 761—615.13(321) or serious violation provisions of rule 761—615.17(321).

(2) No driver's license suspensions, revocations, denials, cancellations, disqualifications, or bars.

(3) Not committed an offense which results in driver's license suspension, revocation, denial, cancellation, disqualification, or bar.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

(4) No record of an accident for which the individual was convicted of a ~~motion~~ *moving* traffic violation.

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ARC 3999B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 1, "Iowa Ethics and Campaign Disclosure Board," Iowa Administrative Code.

The amendment clarifies that a governmental entity not under the Board's jurisdiction may request an advisory opinion from the Board so long as the underlying issue involved is subject to the Board's jurisdiction.

The amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on December 22, 2004, as **ARC 3896B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on January 27, 2005.

This amendment is intended to implement Iowa Code section 68B.32A(11).

This amendment will become effective on March 23, 2005.

The following amendment is adopted.

Amend subrule 1.2(1) as follows:

1.2(1) Who may request opinion. Any person subject to the board's jurisdiction may request a board advisory opinion, including a local official or local employee seeking an opinion on the application of the ethics laws in Iowa Code chapter 68B. *A governmental entity not under the board's jurisdiction may request a board advisory opinion on an issue subject to the board's jurisdiction.* An authorized agent may seek an opinion on behalf of any person. The board will not issue an opinion to an unauthorized third party. The board may on its own motion issue opinions without receiving a formal request.

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ARC 4000B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 1, "Iowa Ethics and Campaign Disclosure Board," Iowa Administrative Code.

The amendment clarifies that the Board's Executive Director and Legal Counsel shall follow the same procedure as do members of the Board when requesting consent to sell goods or services to a person subject to the regulatory authority of the Board.

The amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on December 22, 2004, as **ARC 3897B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on January 27, 2005.

This amendment is intended to implement Iowa Code section 68B.4.

This amendment will become effective on March 23, 2005.

The following amendment is adopted.

Amend subrule 1.7(7) as follows:

1.7(7) Employee sales. *Since the board's executive director and legal counsel is an "official" as defined in Iowa Code section 68B.2(17), the board's executive director and legal counsel shall follow the procedure for requesting consent to sell goods or services to a person subject to the board's regulatory authority as set out in rule 351—1.7(68B).* The procedure for a board employee to request consent to sell goods or services to a person subject to the board's regulatory authority is governed by rule 351—6.11(68B).

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ARC 3997B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The amendments require state party committees to disclose on their reports candidate ID numbers when making contributions to statewide and General Assembly candidates or a judge standing for retention. The amendments also require such candidates to disclose on their reports the state party ID number when receiving contributions. This requirement currently applies to statewide political committees (PACs), but not the state parties.

The amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on November 10, 2004, as **ARC 3791B**. No oral or written comments on the amendments were received. The amendments are different from those published under Notice. Item 3 was added in order to correct the address in subrule 4.62(1).

The Board adopted these amendments on January 27, 2005.

These amendments are intended to implement Iowa Code section 68A.402A(1)"k."

These amendments will become effective March 23, 2005.

The following amendments are adopted.

ITEM 1. Rescind subrule 4.14(6) and adopt the following **new** subrule in lieu thereof:

4.14(6) ID number and check number. If a contribution to a statewide or general assembly candidate or a judge standing for retention is from a statewide political committee (PAC) or a state party committee, the candidate receiving the contribution shall include on the candidate's disclosure report the board-assigned identification number of the contributing committee and the check number by which the contribution was made. A list of ID numbers may be obtained from the board and is also available on the board's Web site at www.iowa.gov/ethics.

ITEM 2. Rescind subrule 4.15(5) and adopt the following **new** subrule in lieu thereof:

4.15(5) Candidate ID number and committee check number. If a contribution is made by a statewide political committee (PAC) or a state party committee to a statewide or general assembly candidate or a judge standing for retention, the committee making the contribution shall include on the committee's disclosure report the board-assigned identification number of the recipient candidate's committee and the check number by which the contribution was made. A list of candidate ID numbers may be obtained from the board and is also available on the board's Web site at www.iowa.gov/ethics.

ITEM 3. Amend subrule 4.62(1) as follows:

4.62(1) Where payment made. Checks or money orders shall be made payable and forwarded to: Iowa Ethics and Campaign Disclosure Board, ~~514 E. Locust Street, Suite 104, Des Moines, Iowa 50309~~ *510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319*. Such funds shall be deposited in the general fund of the state of Iowa.

[Filed 1/28/05, effective 3/23/05]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/16/05.

ARC 3996B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The amendment permits a state party committee to receive contributions from a corporation, insurance company, or financial institution when such contributions are placed in a building fund account and the state party discloses transactions related to the fund.

The amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on December 22, 2004, as **ARC 3898B**. The amendment is different from that published under Notice. Subrule 4.24(2) was changed as follows:

1. Paragraph "d" was changed to require that the date to be used when disclosing "unitemized" contributions is the last day of the reporting period.

2. Paragraph "e" was relettered as "h," and new paragraphs "e," "f," and "g" were added.

These changes were made in response to a request from the Administrative Rules Review Committee that expenditures from a party building fund also be disclosed. The catchwords of the rule and the introductory paragraph were also changed to reflect that expenditures from the fund are required to be disclosed.

The Board adopted the amendment on January 27, 2005.

This amendment will become effective on March 23, 2005.

This amendment is intended to implement Iowa Code sections 68A.402A(1)"k" and 68A.503.

The following amendment is adopted.

Adopt **new** rule 351—4.24(68A) as follows:

351—4.24(68A) Reporting of state party building fund transactions. Pursuant to Federal Election Commission Advisory Opinion 2004-28, the board will permit a state statutory political committee (state party committee) to receive contributions from corporations, insurance companies, and financial institutions when those contributions are placed in the state party building fund account, the contributions are used to pay for costs associated with the building, and all transactions involving the fund are disclosed pursuant to this rule.

A state party committee filing a state party building fund report under this rule shall use either the report form prescribed by the board or a computer-generated report so long as the report includes the information required under subrule 4.24(2).

4.24(1) Period covered. A state party building fund report shall cover the time period from January 1 through December 31 of the previous year.

4.24(2) Information to be disclosed. The following information shall be disclosed on a state party building fund report:

a. The name and address of the state party committee.

b. The name and address of each person who makes a contribution in excess of $200, or contributions in the aggregate that exceed $200 during the period covered, to the state party building fund. If no contributions were received for the fund, the report shall disclose $0.00 as contributions received.

c. The date and the amount of the contribution. If aggregate contributions from one person are received that exceed $200, the amount to be disclosed shall be the total amount received from that person for the period covered and the date to be disclosed shall be the date of the last contribution.

d. The total amount of all contributions of $200 or less received during the period covered. This total amount shall be disclosed as being received from "unitemized" with the date of the contribution being the last day of the reporting period.

e. The name and mailing address of each person to whom an expenditure that exceeds $20 is made, or expenditures in the aggregate that exceed $200 during the period covered, from the state party building fund. If no expenditures were made from the fund, the report shall disclose $0.00 as expenditures made.

f. The date and the amount of the expenditure. If aggregate expenditures that exceed $200 are made to one person, the amount to be disclosed shall be the total amount made to that person for the period covered and the date to be disclosed shall be the date of the last expenditure.

g. The total amount of all expenditures of $200 or less made during the period covered. This total amount shall be

disclosed as being expended to "unitemized" with the date of the expenditure being the last day of the reporting period.

h. The signature and date of the individual filing the state party building fund report.

4.24(3) Place of filing. A state party building fund report shall be filed with the board at 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319, or by fax at (515)281-3701.

4.24(4) Time of filing. A state party building fund report shall be filed on or before January 31 of each year. If mailed, the report must bear a United States Postal Service postmark dated on or before the due date. A faxed report must be submitted on or before 11:59 p.m. on the due date. If January 31 falls on a Saturday, Sunday, or holiday on which the board office is closed, the due date shall be extended to the next working day when the board office is open.

4.24(5) Failure to file. If the board determines that a state party committee has failed to timely file a state party building fund report, the state party committee is subject to the possible imposition of board sanctions.

This rule is intended to implement Iowa Code sections 68A.402A(1)"k" and 68A.503.

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ARC 3998B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The amendment clarifies that a federal PAC is permitted to make contributions to Iowa state committees and file verified statements of registration (VSRs) in lieu of registering as an Iowa state PAC.

The amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on November 10, 2004, as **ARC 3790B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on January 27, 2005.

This amendment is intended to implement Iowa Code section 68A.201(5).

This amendment will become effective March 23, 2005.

The following amendment is adopted.

Amend rule 351—4.32(68A), introductory paragraph, as follows:

351—4.32(68A) Contributions from political committees not organized in Iowa. Iowa committees may receive contributions from committees outside Iowa, and committees outside Iowa may contribute to Iowa committees provided the out-of-state committee complies with either subrule 4.32(1) or subrule 4.32(2). *For purposes of this rule, "out-of-state committee" means a committee that is registered with the campaign enforcement agency of another state or is registered with the Federal Election Commission.*

[Filed 1/28/05, effective 3/23/05]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/16/05.

ARC 3995B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 6, "Executive Branch Ethics," Iowa Administrative Code.

The amendment continues the process of the Board's adopting standards for governing the ethical conduct of persons in the executive branch of state government. The amendment also prohibits executive branch officials, employees, and candidates for statewide office from receiving loans, with certain exceptions, from executive branch lobbyists.

This amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on November 10, 2004, as **ARC 3789B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on January 27, 2005.

This amendment is intended to implement Iowa Code sections 68B.24 and 68B.32A(12).

This amendment will become effective on March 23, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [6.20] is being omitted. This amendment is identical to that published under Notice as **ARC 3789B**, IAB 11/10/04.

[Filed 1/28/05, effective 3/23/05]
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[For replacement pages for IAC, see IAC Supplement 2/16/05.]

ARC 3994B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 9, "Complaint, Investigation, and Resolution Procedures," Iowa Administrative Code.

The amendment establishes whistle-blower protection for an employee who in good faith files a complaint with the Board, provides information to the Board for possible Board-initiated investigation, or provides information during a Board investigation.

The amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on November 10, 2004, as **ARC 3793B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on January 27, 2005.

This amendment is intended to implement Iowa Code sections 68B.32A(13) and 68B.32B.

This amendment will become effective March 23, 2005.

The following amendment is adopted.

Adopt **new** rule 351—9.6(68B) as follows:

351—9.6(68B) Whistle-blower protection. A person who discharges or discriminates against an employee because the employee filed a complaint, provided information to the board for a possible board-initiated investigation, or provided information during the course of a board investigation shall be subject to the board's complaint process if the employee filed the complaint or provided the information in good faith. If it is determined after a contested case proceeding that a person has impermissibly discharged or discriminated against an employee, the board may impose sanctions as set out in Iowa Code section 68B.32D.

For purposes of this rule, "good faith" means that any statements or materials in a complaint, in information provided to the board for a possible board-initiated investigation, or provided in information during the course of a board investigation were made or provided with a reasonable belief that such statements or materials were true and accurate.

This rule is intended to implement Iowa Code sections 68B.32A(13) and 68B.32B.

[Filed 1/28/05, effective 3/23/05]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/16/05.

ARC 4001B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 15, "Waivers or Variances from Administrative Rules," Iowa Administrative Code.

The amendment clarifies that a person requesting a waiver of a civil penalty imposed by Board rule for a late-filed report is not required to use the process for seeking a waiver set out in 351—Chapter 15 and may instead simply submit a letter that states any reasons why a waiver should be granted.

The amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on November 10, 2004, as **ARC 3792B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on January 27, 2005.

This amendment is intended to implement Iowa Code chapters 17A, 68A and 68B.

This amendment will become effective March 23, 2005.

The following amendment is adopted.

Amend rule 351—15.2(17A,68A,68B) as follows:

351—15.2(17A,68A,68B) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board in situations when no other more specifically applicable law or rule provides for waivers. To the extent another more specific provision of law or rule governs the issuance of a waiver, the more specific provision shall supersede this chapter with respect to any waiver process. *A person seeking a waiver of a civil penalty under rule 351—4.60(68B), 351—7.6(68B), or 351—8.12(68B) for the late filing of a report is not required to follow the process set out in this chapter. The person may instead file the waiver request by submitting a letter that includes any reasons why a waiver should be granted.*

[Filed 1/28/05, effective 3/23/05]
[Published 2/16/05]

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ARC 4002B

NATURAL RESOURCES DEPARTMENT[561]

Adopted and Filed

Pursuant to the authority of Iowa Code section 558.69, the Department of Natural Resources hereby amends Chapter 9, "Groundwater Hazard Documentation," Iowa Administrative Code.

The amendments have two purposes. The first purpose is to clarify the real estate transactions with which a seller must submit a Groundwater Hazard Statement. The current rules require a statement to be filed with any voluntary transfer of a possessory interest in real estate.

The second purpose of the amendments is to allow for the electronic submission of Groundwater Hazard Statements. County recorders are currently working to upgrade their systems and procedures to facilitate the electronic submission of real estate documents. The rule changes are designed to make the Department's rules compatible with the proposed county procedures.

Notice of Intended Action was published December 8, 2004, as **ARC 3844B**. A public hearing was held on December 29, 2004. No written or oral comments were received during the comment period. No changes have been made to the amendments published under Notice.

These amendments are intended to implement Iowa Code section 558.69.

These amendments will become effective on March 23, 2005.

The following amendments are adopted.

ITEM 1. Rescind subrule 9.1(4) and adopt the following **new** subrule in lieu thereof:

9.1(4) When groundwater hazard statement is required. A groundwater hazard statement shall be presented to the county recorder along with the real estate transaction documents for any real estate transaction in which a declaration of

value is required to be submitted pursuant to Iowa Code chapter 428A. Additionally, a groundwater hazard statement shall be presented at the time of the recording of the following real estate transaction documents which are exempt from the filing of a declaration of value:

a. Any recorded lease of land which has a term of five years or more;

b. Any voluntary transfer or receipt of real property by governmental entities if title to that property was voluntarily acquired by the governmental entity. Governmental transactions which are exempted from the filing of a groundwater hazard statement include sheriff's deeds, tax deeds, and any other transaction for which the governmental entity did not voluntarily acquire title. A groundwater hazard statement is not required to accompany a clerk's change of title.

ITEM 2. Amend subrule 9.2(2) as follows:

9.2(2) The form shall be submitted to the county recorder, *in the form prescribed by the recorder,* at the time that ~~the declaration of value, deed, real estate contract, vendee's real estate contract assignment, plat, lease or other instrument of real property transfer~~ *a real estate transaction document with which a groundwater hazard statement is required by 9.1(4)* is filed with the county recorder.

ITEM 3. Amend subrule 9.2(3) as follows:

9.2(3) ~~If the statement submitted reveals no well, disposal site, underground storage tank, or hazardous waste on the property,~~ *In all cases,* the county recorder shall return the original of the statement to the transferee when the recorded instrument is returned. If the statement submitted reveals that there is a well, a disposal site, an underground storage tank, or hazardous waste on the property, *a copy of* the form shall be ~~filed in duplicate so that the original of the statement can be returned to the transferee when the recorded instrument is returned, and the recorder shall send the photocopy or other duplicate suitable for microfilming of all positive statements filed the preceding month to the department~~ *submitted to the department* within 15 days after the close of each month. *If a standardized electronic format is established by agreement between the Iowa County Recorders Association and the department, then the department's copy may be submitted electronically in the manner established by the agreement. Forms on which a private burial site is the sole matter disclosed and which do not reveal the existence of a well, disposal site, underground storage tank, or hazardous waste on the property shall not be submitted to the department. Forms shall be retained by the department for a period of five years.*

[Filed 1/28/05, effective 3/23/05]
[Published 2/16/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/16/05.

ARC 3980B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Physician Assistant Examiners amends Chapter 326, "Licensure of Physician Assistants," Iowa Administrative Code.

This amendment clarifies the responsibility of a physician assistant to ensure that the supervising physician knows of the supervisory relationship.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 10, 2004, as **ARC 3774B**. A public hearing was held on November 30, 2004, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. There were public comments both for and against the language of the proposed amendment. Those in opposition suggested that the proposed language required the PA to be responsible for telling the supervising physician what that supervising physician's responsibilities were, and they felt that was inappropriate. There were comments also that the rule was unnecessary because the supervising physician and PA work as a team and the supervising physician would already be aware of the relationship. Comments also noted that some of the terminology used had been removed from the Code several years ago so should not be used.

In response to public comment, the Board modified the proposed language by highlighting that notification is in part a scheduling issue and in part a mutual responsibility of both the physician assistant and supervising physician. The Board modified the proposed language using language agreed upon by the various stakeholders that had made comments during the public comment period.

This amendment will become effective March 23, 2005.

This amendment is intended to implement Iowa Code section 147.107 and chapters 148C and 272C.

The following amendment is adopted.

Amend subrule 326.8(4), introductory paragraph, as follows:

326.8(4) It shall be the responsibility of the physician assistant with a supervising physician to ensure that the physician assistant is adequately supervised. *The physician assistant shall notify the supervising physician(s) that the physician is listed with the board as a supervising physician. The physician assistant and supervising physician shall mutually coordinate their schedule.*

[Filed 1/19/05, effective 3/23/05]
[Published 2/16/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/16/05.

ARC 3987B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Pursuant to the authority of Iowa Code section 692A.10, the Department of Public Safety hereby amends Chapter 8, "Criminal Justice Information," and adopts new Chapter 83, "Iowa Sex Offender Registry," Iowa Administrative Code.

The Department of Public Safety maintains a central registry of information collected from persons who are required to register under Iowa Code chapter 692A, which is known as the Iowa Sex Offender Registry. Prior to May 17, 2004, the extent to which information from the Registry was accessible to the general public varied according to the outcome of a risk assessment performed in accordance with Iowa Code Supplement section 692A.13A. Language included in 2004

Iowa Acts, chapter 1175 [Senate File 2298], deleted references to risk assessments and provided that, with narrow exceptions, information regarding all registrants could be placed on the Iowa Sex Offender Registry Web site, which is maintained by the Department of Public Safety.

Emergency rule making was undertaken in July to implement the changes to Iowa Code chapter 692A which passed as part of 2004 Iowa Acts, chapter 1175, and was published in the Iowa Administrative Bulletin on August 4, 2004, as **ARC 3549B**. The emergency rule making took effect on July 15, 2004. Notice of Intended Action, which included the amendments which were adopted emergency and additional changes, was published in the Iowa Administrative Bulletin on September 29, 2004, as **ARC 3686B**. The Notice of Intended Action provided an opportunity for public comment on the amendments that were Adopted and Filed Emergency and on the proposed additional changes to the rules governing the Iowa Sex Offender Registry. The additional changes included rescinding the definition of "affirmative public notification," which is no longer needed, deleting a provision related to confidential background investigations by government agencies, striking an exception to the confidentiality of requests for information from the Registry, and changing the definition of "other relevant offenses" by adding incest against a dependent adult to the definition. All of these changes reflect statutory changes made in 2004 Iowa Acts, chapter 1175, division XXV.

Finally, all of the rules governing the Iowa Sex Offender Registry were proposed to be transferred from the existing Chapter 8, which includes rules dealing with a number of systems for handling criminal justice information, into a new Chapter 83, which will include only rules for the Iowa Sex Offender Registry. This is part of a more general renumbering of the rules of the Department, in order to rationalize their organization and simplify the task of persons attempting to locate rules on specific subjects.

A public hearing on the proposed amendments was held on October 21, 2004. While no comment was received at the public hearing, the Department did receive one comment questioning the inclusion in subrule 83.2(9) of the words "locations frequented by the offender" in the definition of "relevant information." The suggestion was made that the identification of a location frequented by an offender could do harm to an innocent third party, such as a business which the offender patronizes, and that the phrase is vague. The Department respectfully disagrees with the objection and elected to retain the phrase "locations frequented by the offender" in the definition of "relevant information." The intent is to identify general location, such as a city block or general area, rather than a specific business or address. In addition, the phrase is not new and has been included in the statute and the rules since 1999. The adopted amendments are identical to those published under Notice of Intended Action.

These amendments will become effective on April 1, 2005.

These amendments are intended to implement Iowa Code chapter 692A.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [8.301 to 8.305, Ch 83] is being omitted. These amendments are identical to those published under Notice as **ARC 3686B**, IAB 9/29/04.

[Filed 1/26/05, effective 4/1/05]
[Published 2/16/05]

[For replacement pages for IAC, see IAC Supplement 2/16/05.]

ARC 3993B

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code section 421.17, the Department of Revenue hereby rescinds Chapter 1, "State Board of Tax Review—Administration," and adopts new Chapter 1 with the same title, and rescinds Chapter 2, "Conduct of Appeals, Rules of Practice and Procedure," and adopts new Chapter 2, "State Board of Tax Review—Conduct of Appeals and Rules of Practice and Procedure," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXVII, No. 134, p. 880, on December 22, 2004, as **ARC 3895B**.

Item 1 rescinds Chapter 1 and adopts new Chapter 1, which governs the administrative aspect of the State Board of Tax Review. The new chapter is adopted in order to update current administrative procedures and to delete obsolete rules and language. Item 2 rescinds Chapter 2 and adopts new Chapter 2, which governs the practice and procedures regarding appeals to the State Board of Tax Review. The new chapter is adopted in order to update the language to conform to current practice before the State Board of Tax Review, to provide a clearer understanding of the requirements for appeal to the State Board from a decision by the Director of the Department, and to allow the Department and the taxpayer to seek judicial review of a decision or order of the State Board of Tax Review pursuant to 2004 Iowa Acts, chapter 1073, section 3.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective March 23, 2005, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement 2004 Iowa Acts, chapter 1073, section 3.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [rescind and adopt new Chs 1, 2] is being omitted. These amendments are identical to those published under Notice as **ARC 3895B**, IAB 12/22/04.

[Filed 1/28/05, effective 3/23/05]
[Published 2/16/05]

[For replacement pages for IAC, see IAC Supplement 2/16/05.]

ARC 3989B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.4, 476.1, 476.2, and 476.103, the Utilities Board (Board) gives notice that on January 26, 2005, the Board issued an order in Docket No. RMU-04-9, In re: Revisions to Rules Prohibiting Unauthorized Changes in Telecommunications Service [199 IAC 22], "Order Adopting Amendments." The order adopted amendments, with certain revisions, which were published under Notice of Intended Action in IAB Vol. XXVII, No. 13 (12/22/2004) p. 891, as **ARC 3900B**.

The amendments are made to current subrule 199 IAC 22.23(2), which prohibits a telecommunications service provider from submitting a carrier change order to another service provider without customer authorization of the change. The Board routinely grants waivers of this requirement in cases where a carrier acquires customers from another carrier by sale or asset transfer. The amendments create a procedure by which the acquiring carrier must certify to the Board in advance of the transfer that it will comply with the new requirements, which include advance notice to the Board and affected customers.

The amendments also remove the list of examples of appropriate data to be used to verify customer authorization of changes in telecommunications service. In the Notice of Intended Action, the Board proposed to delete the phrase "social security number" from the list of examples. This left only one item, "customer's date of birth," in the list. Having only one example may give the appearance of unduly restricting the verification options, so in Items 2 through 4 of the adopted amendments, the Board has stricken the list of examples altogether.

Written comments were filed by the Consumer Advocate Division of the Department of Justice and Local Telephone Data Services Corporation. The comments did not result in any changes to the amendments. The Board's order adopting the amendments can be found on the Board's Web site, www.state.ia.us/iub.

The amendments will become effective March 23, 2005.

These amendments are intended to implement Iowa Code sections 17A.4, 476.1, 476.2, and 476.103.

The following amendments are adopted.

ITEM 1. Amend subrule **22.23(1)**, definition of "slamming," as follows:

"Slamming" means the designation of a new provider of a telecommunications service to a customer, including the initial selection of a service provider, without the verified consent of the customer. *"Slamming" does not include the designation of a new provider of a telecommunications service to a customer made pursuant to the sale or transfer of another carrier's customer base, provided that the designation meets the requirements of 199 IAC 22.23(2)"e."*

ITEM 2. Amend subparagraph **22.23(2)"a"(3)** as follows:

(3) An appropriately qualified independent third party has obtained the customer's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification data ~~(e.g., the customer's date of birth or social security number)~~. The independent third party must not be owned, managed, controlled, or directed by the service provider or the service provider's marketing agent; must not have any financial incentive to confirm preferred carrier change orders for the service provider or the service provider's marketing agent; and must operate in a location physically separate from the service provider or the service provider's marketing agent. The content of the verification must include clear and conspicuous confirmation that the customer has authorized a preferred carrier change; or

ITEM 3. Amend numbered paragraph **22.23(2)"d"(4)"2,"** second and third bulleted paragraphs, as follows:

- The local exchange carrier has obtained the customer's electronic authorization, placed from the telephone number(s) on which the preferred service provider freeze is to be imposed, to impose a preferred service provider freeze. The electronic authorization shall confirm appropriate verification data ~~(e.g., the customer's date of birth or social security number)~~ and the information required in 22.23(2)"d"(4)"3." Service providers electing to confirm preferred service provider freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism that records the required information regarding the preferred service provider freeze request, including automatically recording the originating automatic numbering identification; or
- An appropriately qualified independent third party has obtained the customer's oral authorization to submit the preferred service provider freeze and confirmed the appropriate verification data ~~(e.g., the customer's date of birth or social security number)~~ and the information required in 22.23(2)"d"(4)"3." The independent third party must not be owned, managed, or directly controlled by the service provider or the service provider's marketing agent; must not have any financial incentive to confirm preferred service provider freeze requests for the service provider or the service provider's marketing agent; and must operate in a location physically separate from the service provider or the service provider's marketing agent. The content of the verification must include clear and conspicuous confirmation that the customer has authorized a preferred service provider freeze.

ITEM 4. Amend numbered paragraph **22.23(2)"d"(5)"2"** as follows:

2. A local exchange service provider administering a preferred service provider freeze must accept a customer's oral authorization stating the intention to lift a preferred carrier freeze and must offer a mechanism that allows a submitting service provider to conduct a three-way conference call with the service provider administering the freeze and the customer in order to lift a freeze. When engaged in oral authorization to lift a preferred service provider freeze, the service provider administering the freeze shall confirm appropriate verification data ~~(e.g., the customer's date of birth or social security number)~~ and the customer's intent to lift the particular freeze.

ITEM 5. Amend subrule **22.23(2)** by adopting **new** paragraph **"e"** as follows:

e. Procedures in the event of sale or transfer of customer base. A telecommunications carrier may acquire, through a sale or transfer, either part or all of another telecommunications carrier's customer base without obtaining each customer's authorization in accordance with 199 IAC 22.23(2)"a," provided that the acquiring carrier complies with the following procedures. A telecommunications carrier may not use these procedures for any fraudulent purpose, including any

attempt to avoid liability for violations under 199 IAC 22.23(2)"a."

(1) No later than 30 days before the planned transfer of the affected customers from the selling or transferring carrier to the acquiring carrier, the acquiring carrier shall file with the board a letter notifying the board of the transfer and providing the names of the parties to the transaction, the types of telecommunications services to be provided to the affected customers, and the date of the transfer of the customer base to the acquiring carrier. In the letter, the acquiring carrier also shall certify compliance with the requirement to provide advance customer notice in accordance with 199 IAC 22.23(2)"e"(3) and with the obligations specified in that notice. In addition, the acquiring carrier shall attach a copy of the notice sent to the affected customers.

(2) If, subsequent to the filing of the letter of notification with the board required by 199 IAC 22.23(2)"e"(1), any material changes to the required information develop, the acquiring carrier shall file written notification of these changes with the board no more than 10 days after the transfer date announced in the prior notification. The board may require the acquiring carrier to send an additional notice to the affected customers regarding such material changes.

(3) Not later than 30 days before the transfer of the affected customers from the selling or transferring carrier to the acquiring carrier, the acquiring carrier shall provide written notice to each affected customer. The acquiring carrier must fulfill the obligations set forth in the written notice. The written notice must inform the customer of the following:

1. The date on which the acquiring carrier will become the customer's new provider of telecommunications service;

2. The rates, terms, and conditions of the service(s) to be provided by the acquiring carrier upon the customer's transfer to the acquiring carrier, and the means by which the acquiring carrier will notify the customer of any change(s) to these rates, terms, and conditions;

3. The acquiring carrier will be responsible for any carrier change charges associated with the transfer;

4. The customer's right to select a different preferred carrier for the telecommunications service(s) at issue, if an alternative carrier is available;

5. All customers receiving the notice, even those who have arranged preferred carrier freezes through their local service providers on the service(s) involved in the transfer, will be transferred to the acquiring carrier unless they have selected a different carrier before the transfer date; existing preferred carrier freezes on the service(s) involved in the transfer will be lifted; and the customers must contact their local service providers to arrange a new freeze;

6. Whether the acquiring carrier will be responsible for handling any complaints filed, or otherwise raised, prior to or during the transfer against the selling or transferring carrier; and

7. The toll-free customer service telephone number of the acquiring carrier.

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IOWA ADMINISTRATIVE BULLETIN
Customer Service Center
Department of Administrative Services
Hoover State Office Building, Level A
Des Moines, Iowa 50319

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